140-241
140-247

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. 310.

WOODWARD, BALDWIN AND CO., A FIRM COMPOSED OF WILLIAM H. BALDWIN, CHRISTOPHER C. BALDWIN, AND REGINALD T. WOODWARD, APPELLANTS,

*vs.*

DANIEL A. JEWELL, ELIZABETH S. MYRICK, MRS. ELIZABETH DANIEL, SETH P. MYRICK, AND MRS. ELIZA P. JONES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED DECEMBER 16, 1887.

and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimant for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this day of 10 February, A. D. 1888.

Seal Court of Claims.

JOHN RANDOLPH,
*Ass't Clerk Court of Claims.*

Endorsed on cover: Court of Claims. No. 330. Horace E. Mullan, appellant, *vs.* The United States. Filed February 24, 1888.

140-247
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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1–4 UNITED STATES OF AMERICA,
*Western Division, Southern District of Georgia,* } ss:

At a stated term of the fifth circuit court of the United States for the western division of the southern district of Georgia, begun and holden in the United States court-room, in the city of Macon, Georgia, on the first Monday in October, A. D. 1885—present, the Honorable Emory Speer, district judge, presiding—the following, among other, proceedings were had, to wit:

WOODWARD, BALDWIN & CO., Compl'ts,
*vs.*
DANIEL A. JEWELL *et al.*, Def'ts. } In Equity.

Be it remembered that heretofore, to wit, on the tenth day of April, 1884, came the complainants, by their solicitors, W. E. Jackson and Hill & Harris, and filed in the clerk's office of said court their bill in the words and figures following, to wit:

*Bill.*

UNITED STATES OF AMERICA,
*State of Georgia, Southern District, Western Division.* }

5 To the judges of the circuit court of the United States for the western division of the southern district of Georgia:

William H. Baldwin, Jr., a resident of the city of Baltimore and a citizen of the State of Maryland, and Christopher C. Baldwin, Elijah P. Smith, and Rigual T. Woodward, residents of the city of New York and citizens of the State of New York, partners in trade under the name and style of Woodward, Baldwin & Co., and doing business in the city and State of New York, bring this their bill against Daniel A. Jewell, of Jewells, Hancock county, and Steth P. Myrick, of Milledgeville, Baldwin county, and Elizabeth Daniel, of Baldwin county, all of said defendants being citizens of the State of Georgia and residing within the aforesaid western division of the southern district of Georgia, and thereupon your orators complain and say—

That the said Daniel A. Jewell was, on the 17th day of January, 1878, largely indebted to complainants on open account, to wit, the sum of about thirty thousand dollars, and for the purpose of securing the said indebtedness executed to complainants on the day and year aforesaid certain instruments in writing whereby he conveyed the property hereinafter set forth, to which said instruments in writing there was a condition annexed that the same should be void upon the payment by said Jewell to complainants of the sums of money therein specified.

6 Said conveyances set forth the amount that each piece of property was conveyed to secure as follows, to wit: The sum of ten thousand dollars was secured by a conveyance of Jewell's Mills factory, located in Warren county, Georgia, comprising thir-

teen acres (13); the sum of twelve thousand dollars was secured by a conveyance of a tract of land located in Twiggs county, Georgia, and known as the "Myrick Mills plantation," containing thirty-two hundred acres; the sum of three thousand dollars was secured by a conveyance of a tract of land located in Sumter county, Georgia, and known as the "Dowdell plantation," containing twelve hundred acres, and the sum of five thousand dollars was secured by a conveyance of two tracts of land located in Baldwin county, Georgia—one known as the Hurt Place and containing seven hundred and sixty acres, and the other consisting of seven hundred and fifty acres of the homestead tract of S. P. Myrick—a copy of which last-mentioned conveyance is hereto annexed and marked Exhibit A, to which leave of reference is prayed as often as may be necessary.

Your orators further show that said last-named instrument is, in legal effect, a mortgage deed, and that at the execution thereof a cotemporaneous agreement in writing was made by and between your orators and the said Jewell, a copy of which is hereto annexed
7 and marked Exhibit B, to which leave of reference is prayed as often as may be necessary, by which it was agreed that your orators, upon the payment of the indebtedness of the said Jewell to them, should return to him the said conveyances executed by him as security therefor, but no bond to reconvey said property upon the payment of said indebtedness was executed.

Your orators further show that thereafter said Jewell from time to time consigned to them goods manufactured by him, which your orators managed to the best of their skill and ability, and the said Jewell received from time to time advances of money from your orators, who are commission merchants, on said goods so consigned; but the said Jewell did not pay off his indebtedness at the expiration of three years, as he had agreed to do, but continued to consign goods as before and draw money upon the same at about their market value.

That in July, 1882, your orators made inquiry as to the market value of the property that was held by them as security, and were informed that some of it would not sell at public sale for as much as the liens that said Jewell had given upon it. Immediately upon receiving said information your orators notified said Jewell that he must pay off a portion of his account and reduce it to such an extent that the security held for his indebtedness would be ample to protect your orators against loss; that thereafter the said Jewell did reduce or pay off from time to time by consignments of goods
8 a portion of his indebtedness to your orators until his suspension, on the 17th day of April, 1883; but your orators never, at any time prior to said date, received any payment derived from the proceeds of sale of any part of the property conveyed as aforesaid to them as security, nor did they at any time relinquish their lien upon any part of said property.

On the said 17th day of April, 1883, said D. A. Jewell made an assignment to C. W. Du Bose and W. H. Jewell of all his assets for the benefit of his creditors, but did not include among his assets

any interest or equity of redemption in the property described in said Exhibit A.

Your orators further show that after the failure of said D. A. Jewell they sold all the goods on hand at the time belonging to him as soon as practicable, but keeping in view the interest of said Jewell to avoid a sacrifice thereof, and accounted for the proceeds of same to his assignees, crediting the same on Jewell's indebtedness to your orators, and upon rendering an account on May 4th, 1882, it appeared that the said Jewell was indebted to your orators in the sum of twenty-four thousand eight hundred and eighty-two $\frac{46}{100}$ dollars ($24,882.46), and which your orators aver was then and there due and payable to them.

9 Your orators immediately proceeded to realize on the said security held by them, and on the 5th day of June, 1883, sold the lien on said "Jewell's Mills factory" to W. L. L. Bowen for the sum of ten thousand and fifty-eight $\frac{33}{100}$ dollars ($10,058.33), with the consent and approval of said assignees, and credited said amount on said Jewell's indebtedness.

And on the 1st day of January, 1884, said assignees sold the property located in Twiggs county at public outcry, and same was purchased by your orators for the sum of eight thousand dollars, which amount was likewise credited on said Jewell's indebtedness, the same having been by your orators' consent sold free of their lien of twelve thousand dollars with the understanding that it was to attach to the proceeds of sale.

And on the same day said assignees sold the said property located in Sumter county at public outcry for the sum of seventeen dollars, subject to your orators' lien of three thousand dollars, and your orators sold said premises on the 20th day of March, 1884, to George W. McNeal for the sum of three thousand one hundred and fifty dollars ($3,150), which was likewise credited on said Jewell's indebtedness.

On the 20th day of March, 1884, your orators paid to said assignees their bill of charges and expenses in connection with said sales of land in Twiggs and Sumter counties, amounting to four hundred and forty-two dollars ($442), and debited the same to the said D. A. Jewell.

10 There is now due to your orators as a balance upon said indebtedness of said Jewell to them the principal sum of four thousand and ninety-nine $\frac{13}{100}$ dollars (4,099.13) besides interest, all of which, together with said debits and credits, will more fully appear by reference to a copy statement of account, hereto annexed and marked "Exhibit C," and to which leave of reference is prayed when necessary, and which has been examined and found correct by said assignees, and for which indebtedness your orators have no security except the property described in Exhibit A, and which was conveyed to them as aforesaid to secure said indebtedness to the amount of five thousand dollars.

Your orators have demanded payment of said balance of indebtedness from said Jewell, who fails and refuses to pay the same, and

your orators are now compelled to bring their bill for the foreclosure of their said mortgage upon the said premises.

Further complaining, your orators shew that on the first day of February, 1882, the said D. A. Jewell executed a deed in pursuance of an alledged sale to said Steth P. Myrick of the property set forth in Exhibit A, except three hundred and fifty-six acres previously conveyed to said Elizabeth Daniel for the consideration alledged ther-in of four thousand and thirty-nine dollars; a copy of
11 which is hereto annexed, marked Exhibit D.

Your orators' said mortgage deed had been recorded on the 31st day of January, 1878, in the office of the clerk of the superior court of Baldwin county, and said Myrick in his purchase of said property had full notice thereof.

The said D. A. Jewell failed to account to your orators for the proceeds of said sale, although, as the said Jewell well knew, he had no right to effect a sale except upon the condition of turning over the proceeds to your orators, and the said sale was made without your orators' knowledge or consent.

Your orators aver and charge that said sale by Jewell to Myrick was made subject to the lien of said mortgage to your orators, and that the amount paid by said Myrick was only the value of the equity of redemption of said Jewell ther-in.

Your orators further show that said Myrick went into possession of said premises & is still in the possession thereof, claiming the same to be free of the lien of your orators' mortgage, and that said Myrick will resist the enforcement of the decree which your orators may obtain for the sale of said premises, and your orators will thereupon be forced to litigate with him.

12 That said Elizabeth Daniel likewise purchased with notice said three hundred and fifty-six acres, also subject to said lien, without your orators' consent and without the proceeds thereof being turned over to them, and went into possession and holds same under claim of title.

Wherefore, as your orators are remediless at law, and to prevent a circuity of action and multiplicity of suits and to settle by one decree the rights of the parties, may it please your honors to grant unto your orators the writ of subpœna of the United States of America, to be directed to said D. A. Jewell and Steth P. Myrick and Elizabeth Daniel, thereby commanding each of them, at a certain day & under a certain penalty therein to be inserted, personally to be and appear before your honors in the honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

And may it please your honors to decree that the said D. A. Jewell and all persons claiming under him may be absolutely debarred and foreclosed of and from all right and equity of redemption in or to the said mortgaged premises or any part thereof.

13 And that the premises aforesaid may be sold for the payment of your orators' said debts and interest, as shown by said "Exhibit C."

And that the said original deed from D. A. Jewell to Steth P. Myrick, a copy of which is hereto annexed, marked Exhibit D, and any deed which Elizabeth Daniel may hold may be delivered up and decreed to be cancelled.

And your orators hereby waive discovery from each of the defendants touching any and all matters in this bill contained.

And your orators will further pray such other and further relief as the nature of their case may require. And your orators will ever pray, &c.

WM. E. JACKSON,
HILL & HARRIS,
*Compl'ts' Sol'rs.*

Endorsement: In equity. United States circuit court, southern district of Georgia, western division. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell, Steth P. Myrick, Elizabeth Daniel. Bill for foreclosure, cancellation, and relief. Filed in clerk's office April 10, 1884. L. M. Erwin, dep. clerk. W. E. Jackson, Hill & Harris, compl'ts' sol'rs.

*Clerk's Memorandum.*

Exhibits A, B, C, and D, appended to the foregoing bill, are here omitted as unnecessarily encumbering the record, the original documents being transcribed and appearing in the evidence in this transcript. See pages 98, 101, 102, 124.

14 Afterwards, to wit, *to* the 10th day of April, 1884, the clerk of said court issued a subpœna in the words and figures following, to wit:

*Equity Subpœna to Appear and Answer.*

UNITED STATES OF AMERICA, *Southern District of Georgia,* } *ss:*

WOODWARD, BALDWIN & CO., Complainant-,
and
DANIEL A. JEWELL, SETH P. MYRICK, ELIZABETH DANIEL, Defendants. } In Equity.

Bill for foreclosure, & relief.

The President of the United States to Daniel A. Jewell, Steth P. Myrick, Elizabeth Daniel, Greeting:

For certain causes offered before the judges of the circuit court of the United States for the southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said

court, wheresoever the same shall then be, at rules to be had
15 on the first Monday in May next, to answer to those things which shall then and there be objected to you in a bill of complaint for foreclosure, cancellation, and relief filed by the said complainant, and to do further and receive what the said court shall have considered in that behalf; and this you may in nowise omit under a penalty of five hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Macon, in said district, this the 10th day of April, in the year of our Lord one thou-
[SEAL.] sand eight hundred and eighty-four, and of American Independence the one hundred and eighth.

L. M. ERWIN,
*Deputy Clerk.*

W. E. JACKSON,
HILL & HARRIS,
*Complainants' Solicitors.*

MEMORANDUM.—The defendants are required to enter appearance in the above cause in the clerk's office on or before the day to which this writ of subpœna is returnable; otherwise the bill may be taken *pro confesso* against them.

L. M. ERWIN,
*Deputy Clerk.*

W. E. JACKSON,
HILL & HARRIS,
*Complainants' Solicitors.*

16 Afterwards, to wit, on the 13th day of April, 1884, the marshal filed his return to the said subpœna in the words and figures following:

*Marshal's Return.*

I certify that I served a copy of the within subpœna on Seth P. Myrick at Midway, in Baldwin county, on the 12th day of April, 1884, and showed to him the original, with the seal of the court thereon, and served a copy of the within subpœna personally upon Daniel A. Jewell at Jewell's Mills, in Hancock county, on the 13th day of April, 1884, and exhibited to him the original, with the seal of the court thereon, and certify that after diligent search I was unable to find Elizabeth Daniel in my district. It is said that she is dead.

The return of—

R. D. LOCKE, *U. S. Marshal*,
By T. D. WELD, *Deputy*.

April 13th, 1884.

Filed April 13th, 1884.

L. M. ERWIN,
*Deputy Clerk.*

Endorsement: In the circuit court of the United States for the western division, southern district of Georgia. May rules, 1884. Woodward, Baldwin & Co., complainants, and Daniel A. Jewell, Seth P. Myrick, Elizabeth Daniel, defendants. In equity. Subpœna in equity. Original. Filed 10th day of April, A. D. 1884. L. M. Erwin, deputy clerk. W. E. Jackson, Hill and Harris, complainants' solicitors.

17 Afterwards, to wit, on the 29th day of April, 1884, came the defendants, Daniel A. Jewell, Seth P. Myrick, and Elizabeth Daniel, by I. R. Saussy and Lanier & Anderson, their solicitors, and filed a precept for appearance in the words and figures following, to wit:

*Equity Precept for Appearance.*

United States Fifth Circuit Court, Southern District of Georgia.

| | |
|---|---|
| WOODWARD, BALDWIN & Co., Complainants, and DANIEL A. JEWELL, SETH P. MYRICK, ELIZABETH DANIEL, Defendants. | In Equity. |

The clerk of this court will please enter my appearance as solicitor for the defendants in the *in the* above-entitled cause.

Dated April 29th, 1884.

J. R. SAUSSY,
*Solicitor for Defendants.*

Afterwards, to wit, at the May rules, 1884, an order was entered upon the order book of said court in the words and figures following, to wit:

*Equity Order for Appearance.*

United States Fifth Circuit Court, Southern District of Georgia.

18

| | |
|---|---|
| WOODWARD, BALDWIN & Co., Complainants, and DANIEL A. JEWELL, SETH P. MYRICK, ELIZABETH DANIEL, Defendants. | In Equity. |

On filing precept in this cause and on motion of J. R. Saussy and Lanier & Anderson—

Ordered that their appearance as solicitors for defendants herein be, and the same hereby is, entered, and that the cause be now docketed for said defendants.

Witness the Honorable Morrison R. Waite, Chief Justice [SEAL.] of *Superior* Court of the United States, this 30th day of April, A. D. 1884.

L. M. ERWIN,
*Deputy Clerk.*

Endorsement: United States fifth circuit court, southern district of Georgia. In equity. Woodward, Baldwin & Co., complainants, and Daniel A. Jewell, Seth P. Myrick, Elizabeth Daniel, defendants. Precept for appearance and order thereon. Filed and entered this 30th day of April, 1884. L. M. Erwin, deputy clerk. I. R. Saussy, solicitor for defendants.

Afterwards, to wit, on the 19th day of May, 1884, came the
19 complainants, by W. E. Jackson and Hill and Harris, their solicitors, and filed their supplemental bill in the words and figures following, to wit:

*Supplemental Bill.*

In the Circuit Court of United States for Western Division of Southern District of Georgia.

WOODWARD, BALDWIN & Co., Complainants,
*vs.*
MYRICK *et al.*, Defendants.
} In Equity.

To the judges of the circuit court of the United States for the southern district of Georgia, western division:

The supplemental bill of complaint of Woodward, Baldwin & Company humbly shows that heretofore they filed their bill of complaint against said Myrick and Mrs. Elizabeth Daniel, praying, amongst other things, for the foreclosure of a mortgage deed upon certain premises alleged to be in possession of said defendants & by them held adversely to orators' rights, and for the sale of said premises.

And your orators have lately discovered, which fact they were unable by the exercise of reasonable diligence to discover prior to the date of filing said bill, that said Elizabeth Daniel departed this life on — day of ——, 188–, intestate, and that her estate has
20 been since her death and now is without representation; that at and upon her death the premises set forth in said original bill and alleged to have been conveyed by D. A. Jewell to her, as well the title and possession thereof, passed and descended to her heirs-at-law, Myrick K. Daniel and Eliza P. Jones, formerly Daniel, both of whom were and are *sui juris;* that on Dec. 19th, 1881, said Myrick K. Daniel conveyed his undivided half interest therein to Eliza P. Jones, who is now in possession of the whole of said premises, and who is a citizen of said western division, residing in Baldwin county, and who is a necessary party to this bill, in lieu of said Elizabeth N. Daniel, who, orators charge, purchased from said Jewell, if she made any purchase at all, only the equity of redemption in said premises, subject to orators' mortgage and with notice thereof.

To the end, therefore, that said Eliza P. Jones may answer as well the matters charged in said original bill of complaint as in the supplemental bill, and that your orators may have such relief against her as is prayed in said original bill against said Elizabeth N.

Daniel, as well as the cancellation of the conveyance to her by said Myrick K. Daniel, may it please your honor to grant the writ of subpœna to be issued to said Eliza P. Jones, commanding her to be and appear at the next rules day thereafter at this court, to abide, stand to, and perform the decree of the court in the premises.

WM. E. JACKSON,
HILL & HARRIS,
*Solicitors for Complainants.*

21 Afterwards, to wit, on the 19th day of May, A. D. 1884, at the May term, 1884, of said court—present, the Honorable James W. Locke, district judge for the southern district of Florida, presiding by assignment during the disability of the district judge for the southern district of Georgia—an order was made in the words and figures following, to wit:

*Order for Leave to File Supplemental Bill.*

Circuit Court of the United States for Southern District of Georgia, Western Division.

WOODWARD, BALDWIN & Co., Complainant-,
*versus*
MYRICK *et al.*, Defendant-. } In Equity.

Proper cause being shown, after due notice to parties at interest, ordered that leave to file the foregoing supplemental bill be, and the same is, granted, and that all the defendants have sixty days from the service of subpœna on said Eliza P. Jones within which to file answer.

JAS. W. LOCKE, *Judge.*

Endorsement: Circuit court of the U. S. In equity. Woodward, Baldwin & Co., complainants, *vs.* Eliza P. Jones. Supplemental bill. Filed May 19th, 1884. M. Erwin, dep'y clerk. W. E. Jackson, Hill & Harris, solicitors for compl'ts.

22 Afterwards, to wit, on the 19th day of May, 1884, the clerk of said court issued a subpœna in the words and figures following, to wit:

*Equity Subpœna to Appear & Answer.*

UNITED STATES OF AMERICA, } *ss:*
*Southern District of Georgia,* }

WOODWARD, BALDWIN & Co., Complainants,
and
MYRICK *et al.* and ELIZA P. JONES, Defendants. } Bill in Equity & Supplemental Bill.

The President of the United States of America to Eliza P. Jones, Greeting:

For certain causes offered before the judges of the circuit court of

the United States for the western division, southern district of Georgia, in equity, you are hereby commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, wheresoever the same shall then be, at rules to be had on the first Monday in July next, to answer those things which shall then and there be objected to you in a bill of complaint for
23 foreclosure filed by the said complainant-, and to do further and receive what the said court shall have considered in that behalf, and this you may in nowise omit under a penalty of five hundred dollars.

Witness the Honorable M. R. Waite, Chief Justice of the Supreme Court of the United States, at Macon, in said district, this
[SEAL.] the 19th day of May, in the year of our Lord one thousand eight hundred and eighty-four, and of American Independence the one hundred and eighth.

MARION ERWIN,
*Deputy Clerk.*

HILL & HARRIS,
*Complainants' Solicitors.*

MEMORANDUM.—The defendant is required to enter appearance in the above cause in the clerk's office on or before the day to which this writ of subpœna is returnable; otherwise the bill may be taken *pro confesso* against her.

MARION ERWIN,
*Deputy Clerk.*

HILL & HARRIS,
*Complainants' Solicitors.*

Afterwards, to wit, on the 24th day of May, 1884, the marshal filed his return to said writ of subpœna in the words and figures following, to wit:

*Marshal's Return.*

24 I certify that I this day executed the within process by delivering a copy of the same to Eliza P. Jones at Milledgeville, Ga., and exhibiting to her the original, with the seal of the court thereon.

May 20th, 1884.

R. P. LOCKE, *U. S. Marshal,*
By JOSEPH HAYNE, *Deputy.*

Filed May 24th, 1884.

M. ERWIN,
*Deputy Clerk.*

Endorsement: In equity. In the circuit court of the United States for the western division, southern district of Georgia. July rules, 1884. Woodward, Baldwin & Co., complainants, and Myrick

*et al.* and Eliza P. Jones, defendant. Subpœna in equity. Original. Filed 19th day of May, A. D. 1884. M. Erwin, deputy clerk. Hill & Harris, complainants' solicitors.

Afterwards, to wit, on the 14th day of June, 1884, came the defendant Daniel A. Jewell, by Lanier & Anderson, his solicitors, and filed his answer in the clerk's office of said court in the words and figures following, to wit:

*Answer of Daniel A. Jewell.*

In United States Court, Western Division, Southern District of Georgia. In Equity.

WOODWARD, BALDWIN & COMPANY
*versus*
DANIEL A. JEWELL, SETH P. MYRICK, *et al.*

25 The answer of Daniel A. Jewell, one of the defendants, to the bill of complainants.

This defendant, now and at all times hereafter saving to himself all and all manner of benefits or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or so much thereof as this defendant is advised is material or necessary to be answered unto, answering, saith that he admits that on or about the 17th day of January, 1878, this defendant, at the solicitation of complainants, executed in their favor the several instruments in writing referred to in said bill, copies of which are thereto attached as Exhibits A and B, to secure an indebtedness in the nominal sum of thirty thousand dollars, and which the complainants claimed to be due them by this defendant; but this defendant states that at the time said instruments were executed there had not then been nor was there at that time nor indeed at any time since an accounting or settlement between the said parties of and concerning their continued transactions, hereinafter more fully set forth, showing any definite sum of money due by this defendant to the said complainants.

This defendant admits and claims that the instruments taken to secure said nominal sum of money were only mortgages, as complainants state, and that the lien thereof on said described lands was to be discharged upon discharge of this defendant's indebtedness to the said complainant; and also that under the
26 agreement, a copy of which is marked Exhibit B, this defendant had the right and authority to sell the lands to the parties defendants named in said bill; disencumbered of said lien, and that, as he is advised and believes, the said lien was in fact discharged when he sold to them, as stated in the bill.

This defendant states that after making said agreement he did from time to time consign to complainants goods manufactured by him, but whether they managed the same to the best of their skill

and ability in the interest of this defendant this defendant has reason to doubt, because at times the goods were not sold at fair market prices, as he has been advised and believes; and in this connection he asks that said complainants be required to exhibit their books of accounts showing the exact dates of each sale & of the payments made by the purchasers to them for said goods and the names of such purchasers.

This defendant admits that he made the assignment to C. W. Du Bose & to W. W. Jewell of all his assets for the benefit of his creditors. He also admits that complainants made the sales and received the several amounts of the proceeds thereof and applied the same as they state in the bill. As to the interest or equity of redemption which he had in the lands sold to Seth P. Myrick and Mrs. Daniel, he did not include them in his assignment, because he had before that time sold the parcels of land to them, as alleged, and he had no interest of equity or redemption therein. As to this defendant being indebted to said complainants on the 4th of May, 1882, in the sum of twenty-four thousand and eight hundred and eighty-two $\frac{40}{100}$ dollars, as alleged, he denies the same to be true, as will be more fully hereinafter shown.

27 He also denies that he now owes complainants a balance, after credit of all said proceeds of sale, the sum of four thousand and ninety-nine $\frac{13}{100}$ dollars, as alleged, besides interest. This defendant says that the statement of account, as shown in Exhibit C, in the bill, and alleged therein to have been examined and found correct by the said assignees, is not correct; that there is no such balance due by this defendant to complainants upon a due and proper accounting between said parties, nor, indeed, any sum whatever, as the defendant avers; and he further states that said assignees had no authority whatever from him to examine or approve the said accounts, nor does he believe they ever made any examination of them or did more than to state the balance account as shown them by the complainants themselves; and of all which this defendant had no knowledge, their purpose in stating or refer-ing to the matter at all being, as this defendant has no doubt, to show that, after making sale of the property assigned to them, there was a balance, as claimed by complainants, still remaining unpaid.

This defendant admits that he sold the land to Seth P. Myrick and to Mrs. Elizabeth Daniel, respecting, as alleged, and conveyed title to the part sold to each; but he denies that he sold no more than his equity of redemption therein when doing so, but that he sold the entire fee and for what was deemed a full and fair

28 consideration for the same, they and he then, as now, all believing that he had full authority and right to sell the same free and unencumbered from complainants' liens, and he then and now believing that in a full and fair accounting between complainants and him they would be found to owe him, rather than he them, after realizing upon the other lands upon which said lien attached. Had he not so believed he would have promptly accounted to complainants for the proceeds of the lands so sold by him. The said

Myrick and the said Mrs. Daniel made their said purchases from this defendant in good faith and under the belief that this defendant, under the terms of said agreement "B," had the right to sell the entire fee discharged of said lien, and therefore paid what was deemed a fair price for said lands.

This defendant, further answering, says that on and prior to the 2nd day of June, 1871, he was engaged in manufacturing cotton goods in his factory, in Hancock county, Georgia, shipping the goods North, and drawing on the same in the hands of his consignees. At that time the complainants seemed desirous of doing all his business as his factors. As an inducement to get all his business they assured him that should he require any money ahead of the sales of his goods consigned he could get it at seven per cent., meaning seven per centum per annum, by his drawing on them at four months. As this offer would be advantageous to him in his said business he accepted it, and therefore consigned complainants the products of his factory and drew drafts *on* his occasions required up to March 31st, 1872, and the same being accepted by com-
29 plainants, although amounting to more than the value of the goods consigned to them, this defendant then owning not only said factory, but also many thousands of acres of lands in the State of Georgia and being in good credit and standing. At that date it appeared by an account rendered the next month that this defendant had drawn drafts on complainants to the amount of $31,295.63 more than complainants had realized on goods and cottons shipped to them, this defendant having for a number of years before transacted a part of his said business with complainants and had gradually overdrawn during those years. In the account current for the month of April, 1872, complainants charged this defendant therein $150.89 for one month's interest for overdraws, as therein appears, at the rate of 7 per cent. per annum, and in the same account current also charged 2½ per cent. for six months on $35,000.00, for overadvances, as therein stated, which sum, this defendant avers, was not the real sum according to the fact, but a nominal sum, assumed for the purpose of charging this extra interest, which interest amounted to $875.00, besides the said 7 per cent. interest before stated, to which this defendant never agreed.

For each month thereafter in said year of 1872, including November, the like 7 per cent. interest per annum was charged up on like overdraws or balances of advances for the amount of interest due or claimed to be due by complainants (and charged up) in said account currant. There was also charged up in the said account current for said November, 1872, 2½ per cent. for six months on the nominal sum of $27,000.00, that being an assumed sum, as
30 in the former instance six months before, and to which this defendant never agreed. This process of compounding at 7 per cent. per annum rate every month and at 2½ additional was continued up to July 1st, 1873. On that date an agreement was entered into between the parties, a copy of which is hereto attached as part hereof, to which the usual leave of reference is prayed, marked Exhibit A, which agreement by its terms was to continue

in force for one year. As appears therein this defendant agreed to pay complainants four per cent. com-ission each six months on the sum of $25,000.00 and interest at the rate of seven per cent. per annum and one-quarter per cent. brokerage on all amounts advanced by them in cash or acceptances, which rate of interest was calculated up every month as to the 7 per cent. and each six months as to the said four per cent., the former being compounded every month and the latter each six months, as will be shown by reference to the accounts rendered. This agreement was, according to its terms, to end on the 1st day of July, 1874, and did so end, as this defendant believed and is so advised. Yet he says that the complainants continued to charge him at the rate of 4 per cent. for each six months on said sum of $25,000.00, being $1,000.00 for each six months, adding it in as principal each six months and so compounding the same, and from that date, 1st July, 1874, to the 17th day of January, 1878, complainants continued to charge up at the same rate on said $25,000.00 the sum of a thousand dollars semi-annually, compounding semi-annually as before and at the
31 same time and all the while charging this defendant 7 per cent. per annum on all advances at the end of each month and so compounding each month at that rate of interest, a process which this defendant is advised, believes, and avers to have been illegal, oppressive, and unjust. Besides, he is advised and believes that the said agreement "A," having been entered into when this defendant was under a great financial pressure, which left him little or no discretion, which was known to said complainants and of which they took advantage, and the said sum of $25,000.00 being a past debt, not then contracted, and no new consideration moving to him, the said agreement requiring a new and higher rate of interest on that sum of money, was void, and that said sum could only bear interest at the rate of 7 per cent. per annum, and even that not charg-able up against defendant until the end of the year; that said agreement by own terms at all events ceased on the 1st day of July, 1874, and complainants had no authority and defendant did not agree to allow them to charge him such rate of interest thereafter as they did so charge.

On the 17th day of January, 1878, this defendant, still laboring under financial pressure, which left him less discretion than before, of which complainants had knowledge and took advantage, was induced by them to sign another agreement, a copy of which is attached to their bill as Exhibit "B," by the terms of which this defendant was to pay them interest at the rate of 7 per cent. per annum and two and a half per cent. commission "for each six months" on the sum of thirty thousand dollars for the term of three years.

32 But this defendant states that the said sum of $25,000.00 was a part of said $30,000.00, and that the latter was no new debt then created at the time said last-named agreement was made, but some time before that, and that neither in the former nor in the latter case was there any commission involved, and it was only a desire to charge this defendant an unconscionable rate of interest, notwithstanding the commissions and other advantages they de-

rived from the handling and sales of the goods and cottons defendant consigned to them so many years before, as will be shown by their accounts; and defendant is advised and avers that, as in the former case, there was no new consideration to sustain said last-mentioned agreement, and that the same was and is void.

Under said agreement the same process of charging interest on advances every month at the rate of 7 per cent. per annum and compounding monthly, charging said 2½ per cent. each six months on the sum of thirty thousand dollars aforesaid and compounding the same each six months, as had been carried on before, *and* was continued, not only through the said term of three years from the said 17th of January, 1878, but after that time and until this defendant ceased to do business aforesaid with complainants, to wit, on or about the 17th day of April, 1883, and which was contrary to the wishes and the interests of this defendant, the said charging and compounding not having been agreed to by him, and, as he avers, being contrary to law, equity, and good conscience.

33 This defendant, further answering, says that from the commencement of said business to the present time the said business has continued from month to month and from year to year without break and without any settlement having been had between said parties of their mutual transactions and accounts therein, and which settlement is now for the first time in order to be made. As part of this answer he attaches a statement, marked Exhibit C, showing the amounts on which and the times when the extra interest was semi-annually charged and the amounts of such interest so charged and compounded. But all these, as well as the interest at 7 per cent. per annum charged up and compounded monthly, will fully appear in the accounts rendered by complainants to defendants monthly and semi-annually, and which would be attached as part of this answer but for their bulk and but for the fact that they are presumed to be copies of complainants' books of accounts, and they have notice of their contents. They will, however, be submitted to the court as part of this answer, which answer he now makes as and by way of a plea, in which he avers that the charges the complainants have made under the name of interest and commission and brokerage, as shown in the said accounts and as herein set forth, are usurious and contrary to equity and good conscience. He prays the court that all the said accounts may be referred to the master of this court or to a special auditor for

34 examination and for a report to be made by him to the court touching all the matters set forth, to the end that all interest or usury not lawfully charged against this defendant may be ascertained; that an accounting may be had between the said parties, and should it be found, as defendant insists is the case, that complainants are largely indebted to him that a decree may be entered in his favor against them for such sum of money as may be found to be equitably due him by complainants, this answer being made and filed as a plea of set-off.

This defendant, further answering, denies that the complainants are entitled to the relief or any part thereof in the said complaint

demanded, and prays the same advantage of his aforesaid answer as if he had pleaded or demurred to said bill of complaint, and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LANIER & ANDERSON,
*Def'ts' Solicitors.*

*Clerk's Memorandum.*

Exhibit A is omitted here, the original document being copied in the evidence and appearing later in this transcript. See page 126.

35 EXHIBIT B.

| Date of balances. | Balances, on most of which 7 per cent. interest. | Amount of interest at 7 per cent. | Semi-annual interest. | Amount of principal on which semi-annual interest charged. |
|---|---|---|---|---|
| April 30, 1872 | $43,212 90 | $150 89 | $875 00 | $35,000 00 |
| May " " | 44,623 06 | 267 48 | | |
| June " " | 44,267 71 | 283 79 | | |
| July " " | 47,547 57 | 303 74 | | |
| Aug. " " | 39,306 56 | 452 21 | | |
| Sept. " " | 39,030 54 | 328 01 | | |
| Oct. " " | 36,685 32 | 182 20 | | |
| Nov. " " | 29,838 11 | 145 67 | 675 00 @ 4 | 27,000 00 |
| Dec. " " | 28,095 29 | 84 67 | | |
| Jan. " 1873 | 25,707 56 | 210 77 | | |
| Feb. " " | 24,183 37 | 367 69 | | |
| Mar. " " | 23,022 14 | 166 06 | | |
| April " " | 20,479 45 | 189 74 | 500 00 @ 4 | 25,000 00 |
| May " " | 24,286 08 | 241 50 | | |
| June " " | 33,837 65 | 132 13 | | |
| July " " | 48,134 68 | 634 20 | 1,000 00 @ 4 | 25,000 |
| Aug. " " | 48,146 39 | 257 61 | | |
| Sept. " " | 30,948 25 | 231 32 | | |
| Oct. & Nov. } 30, 1873 | 26,895 60 | 814 21 | | |
| Dec. " " | 29,571 84 | 303 60 | | |
| Jan. " 1874 | 28,772 18 | 270 90 | 1,000 00 @ 4 | 25,000 |
| Feb. " " | 34,365 49 | 237 31 | | |
| Mar. " " | 36,736 70 | 320 | | |
| April " " | 31,794 99 | 289 75 | | |
| May 30, 1874 | 34,191 15 | 244 86 | | |
| 36 June 30, 1874 | 36,283 78 | 285 29 | | |
| July " " | 33,270 56 | 100 47 | 1,000 00 @ 4 | 25,000 00 |
| August " " | 37,297 56 | 253 57 | | |
| September " " | 32,471 98 | 418 11 | | |
| October " " | 31,650 83 | 296 79 | | |
| November " " | 30,960 53 | 248 06 | | |
| December " " | 32,623 61 | 250 35 | 1,000 00 @ 4 | 25,000 00 |
| January " 1875 | 32,881 33 | 236 86 | | |
| February " " | 32,378 06 | 247 17 | | |
| March " " | 38,390 71 | 258 13 | | |
| April " " | 37,304 90 | 251 18 | | |
| May " " | 43,776 60 | 260 03 | | |

EXHIBIT B—Continued.

| Date of balances. | Balances, on most of which 7 per cent. interest. | Amount of interest at 7 per cent. | Semi-annual interest. | Amount of principal on which semi-annual interest charged. |
|---|---|---|---|---|
| June 30, 1875 | $49,219 27 | $285 62 | $1,000 00 @ 4 | $25,000 |
| July } 30, 1875 August } | 46,416 19 | 796 32 | | |
| September " " | 41,539 95 | 404 61 | | |
| October " " | 41,939 75 | 296 35 | | |
| November " " | 30,388 90 | 602 15 | | |
| December " " | 29,569 46 | 192 64 | 1,000 00 @ 4 | 25,000 00 |
| January " 1876 | 29,037 21 | 220 88 | | |
| February " " | 34,226 70 | 288 25 | | |
| March " " | 34,938 39 | 261 08 | | |
| April " " | 42,250 72 | 272 00 | | |
| June " " | 48,163 79 | 298 78 | | |
| July & Aug. 30, 1876 | 57,352 21 | 723 89 | | |
| September 30, 1876 | 41,524 43 | 892 35 | | |
| October " " | 35,175 83 | 405 86 | | |
| November 30, 1876 | 32,097 68 | 250 52 | | |
| 37 December 30, 1876 | 31,384 17 | 217 74 | 1,000 00 @ 4 | 25,000 00 |
| January " 1877 | 29,663 96 | 220 94 | | |
| February 30, 1877 | 30,942 99 | 213 01 | | |
| March " " | 32,539 78 | 224 09 | | |
| April " " | 29,890 87 | 187 60 | | |
| May " " | 28,105 24 | 392 19 | | |
| June " " | 35,531 53 | 189 51 | 1,000 00 @ 4 | 25,000 00 |
| July " " | 42,079 99 | 243 80 | | |
| August " " | 45,029 60 | 289 61 | | |
| September " " | 43,605 43 | 315 25 | | |
| October " " | 34,320 97 | 581 68 | | |
| November " " | 37,544 30 | 235 31 | | |
| December " " | 41,281 86 | 268 02 | 1,000 00 @ 4 | 25,000 00 |
| January " 1878 | 46,238 16 | 258 07 | | |
| February " " | 49,066 71 | 280 98 | | |
| March " " | 47,184 82 | 324 27 | | |
| April " " | 47,085 28 | 291 41 | | |
| May " " | 50,881 84 | 298 67 | | |
| June " " | 54,301 09 | 317 23 | 750 00 @ 2½ | 30,000 00 |
| July " " | 43,139 77 | 725 50 | | |
| August " " | 38,928 29 | 411 39 | | |
| September " " | 40,168 46 | 513 91 | | |
| October " " | 40,495 30 | 256 63 | | |
| November } 30, 1878 December } | 42,605 11 | 271 13 | 750 00 @ 2½ | 30,000 00 |
| January 30, 1879 | 42,907 84 | 292 82 | | |
| February 30, 1879 | 41,780 98 | 292 63 | | |
| 38 March 30, 1879 | 35,613 87 | 447 21 | | |
| April " " | 35,994 78 | 261 15 | | |
| May 30, 1879 | 37,476 20 | 257 69 | | |
| June " " | 41,791 91 | 243 32 | 750 00 @ 2½ | 30,000 00 |
| July " " | 44,875 17 | 289 10 | | |
| August 30, 1879 | 43,761 79 | 793 28 | | |
| September 30, 1879 | 38,876 09 | 414 47 | | |
| October " " | 35,108 93 | 292 60 | | |
| November " " | 36,031 93 | 236 16 | | |
| December " " | 35,428 50 | 236 15 | 750 @ 2½ | 30,000 00 |
| January " 1880 | 35,682 24 | 253 74 | | |

EXHIBIT B—Continued.

| Date of balances. | Balances, on most of which 7 per cent. interest. | Amount of interest at 7 per cent. | Semi-annual interest. | Amount of principal on which semi-annual interest charged. |
|---|---|---|---|---|
| February 30, 1880 | $35,646 28 | $227 86 | | |
| March " " | 36,190 36 | 258 75 | | |
| April " " | 43,610 82 | 455 43 | | |
| May " " | 47,111 26 | 292 64 | | |
| June, July " " | 56,436 53 | 971 04 | | |
| August, September, October 30, 1880 | 55,972 11 | 360 44 | | |
| November 30, 1880 | 38,190 26 | 546 57 | | |
| December " " | 39,464 97 | 233 | $750 00 @ 2½ | $30,000 00 |
| January " 1881 | 39,745 70 | 257 75 | | |
| February " " | 40,144 82 | 231 19 | | |
| March " " | 39,969 12 | 251 82 | | |
| April " " | 41,309 34 | 255 76 | | |
| May " " | 37,450 22 | 301 22 | | |
| June 30, 1881 | 38,730 44 | 233 60 | 750 00 @ 2½ | 30,000 00 |
| 39 July 30, 1881 | 42,441 07 | 248 79 | | |
| August 30, 1881 | 42,710 00 | 268 02 | | |
| Septem. 30, 1881 | 35,403 47 | 382 13 | | |
| October " " | 34,282 89 | 230 74 | | |
| Novem. " " | 32,485 91 | 243 04 | | |
| Decem. " " | 32,217 51 | 212 61 | 750 00 @ 2½ | 30,000 00 |
| January " 1882 | 32,345,64 | 194 88 | | |
| February 30, 1882 | 31,761 39 | 188 01 | | |
| March " " | 32,601 58 | 235 88 | | |
| April " " | 31,219 07 | 303 24 | | |
| May, June " " | 39,496 05 | 410 44 | 750 00 @ 2½ | 30,000 00 |
| July, August, Septem., & October 30, 1882 | 46,265 16 | 389 12 | 625 00 @ 2½ | 25,000 00 |
| Novem. 30, 1882 | 34,596 92 | 386 22 | | |
| Decem. " " | 33,406 26 | 309 27 | | |
| Jan. 30, 1883 | 33,436 05 | 247 92 | | |
| Feb. " " | 32,974 80 | 200 04 | | |

Approximating and taking the period of eleven years, the average of advances for each year is about ..... $41,217 80
7

Which at 7 per cent. per annum would be per year ..... $28,852 46
And for 11 years ..... 31,537 70

40 The whole monthly interest at 7 per cent. is ..... $38,379 17
" " sum annual is ..... 18,425

Whole interest charged ..... $56,804 17
Interest at 7 per cent. ..... 31,737 70

Overcharge of interest ..... 25,066 47

This statement is an approximate, and is submitted for examination and accurate report by the master or auditor.

STATE OF GEORGIA, }
*Hancock County.* }

DANIEL A. JEWELL, of said county, one of the defendants in the bill to which the foregoing is his answer, *who*, being duly sworn, deposes and says that he has read said answer and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated as information and belief, and as to those matters he verily believes it to be true.

DANIEL A. JEWELL.

Sworn to and subscribed before me this 9th day of June, 1884.
W. H. JEWELL,
*Not. Pub., Hancock Co., Ga.*

Endorsement: In the circuit court of the United States for western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Answer of D. A. Jewell.
41 Filed in office this 14th day of June, 1884. L. M. Erwin, dep. clerk. Lanier & Anderson, his sol's.

Afterwards, to wit, on the 26th day of June, 1884, came the defendant S. P. Myrick, by Lanier & Anderson, his solicitors, and filed in the clerk's office of said court his answer in the words and figures following, to wit:

*Answer of S. P. Myrick.*

In Equity. In Fifth Circuit Court of the United States for Western Division of Southern District of Georgia.

WOODWARD, BALDWIN & CO. }
*vs.*
DANIEL A. JEWELL, SETH P. MYRICK, Mrs. ELIZA P. JONES. }

The separate answer of Seth P. Myrick, one of the defendants in the above-stated case.

This defendant, now and at all times reserving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised is material or necessary to be answered unto, answering, saith that he admits that on or about the 1st day of February, 1882, the said D. A. Jewell executed a deed, in pursuance of a sale to this defendant, for the property set forth in Exhibit D, except the part sold to Mrs. Elizabeth Daniel, the
42 same being also set forth in Exhibit A to said bill; but this defendant states that, so far from purchasing only the equity of redemption in said lands, he undertook to buy and the said Jew-

ell undertook to sell him the entire fee ther-in, in good faith, both believing the one had the right to sell and the other the right to buy the same free from all liens, and in that belief the said Jewell agreed to sell and this defendant agreed to buy said land at its fair market price or value, to wit, the sum specified in the deed from said Jewell to this defendant, and all which price was duly paid before the said bill was filed. As to the state of the accounts and dealings and indebtedness between the complainants and the said D. A. Jewell, as set forth in said bill, this defendant has no personal knowledge, and refers to the answer of the said Jewell on that subject.

This defendant, further answering, denies that the complainants are entitled to the relief or any part thereof in the said complaint demanded, and prays that the same advantage of his aforesaid answer may be allowed him as if he had pleaded or demurred to the said bill of complaint, and he prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LANIER & ANDERSON,
*Defendants' Solicitors.*

STATE OF GEORGIA, }
*Baldwin County.* }

STETH P. MYRICK, the above-named defendant, being duly sworn, deposes and says that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own
43 knowledge except as to matters therein stated as information and belief, as to which matters he believes to be true.

S. P. MYRICK.

Sworn to and subscribed before me this 19th day of June, 1884.
[SEAL.] JOHN R. SMITH,
*Justice of Peace.*

Endorsement: United States circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Answer of S. P. Myrick. Filed in office June 26th, 1884. L. M. Erwin, deputy clerk. Lanier & Anderson.

Afterwards, to wit, on the 26th day of June, 1884, came the defendant Eliza P. Jones, by her solicitors, Lanier & Anderson, and filed in the clerk's office of said court her answer in the words and figures following, to wit:

*Answer of Eliza P. Jones.*

In Equity. In Fifth Circuit Court of the United States for Western Division of the Southern District of Georgia.

WOODWARD, BALDWIN & CO.
*vs.*
DANIEL A. JEWELL, SETH P. MYRICK, and Mrs. ELIZA P. JONES.

The separate answer of Mrs. Eliza P. Jones, one of the de-
44 fendants in the above-stated case.

This defendant, now and at all times reserving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or so much thereof as this defendant is advised is material or necessary to be answered unto, answering, saith that she admits it is true that Mrs. Elizabeth Daniel bought from said Daniel A. Jewell part of the land set forth in Exhibit A to said bill; but this defendant states that she is advised and believes that so far from purchasing only the equity of redemption therein she bought the entire fee and paid therefor the sum of one thousand dollars, the same being a fair price for said land, and that she bought the same freed from all mortgage or other lien thereon, believing that the said Jewell had the right to so sell the same, the whole of said purchase-money having been paid prior to filing of said bill.

That defendant further states that Mrs. Elizabeth Daniel, after acquiring title to said land as aforesaid and whilst so holding the same, died on the 14th day of July, 1882, intestate, leaving only two children as her sole heirs-at law, to wit, this defendant and her brother, M. K. Daniel, and that the latter, being of the age of twenty-one years, executed in favor of this defendant a deed conveying to her his undivided half interest in said land, a copy of which is hereto attached as Exhibit B, whereby the entire title to said land, as she claims, vested in her. She also attaches a copy of the deed from said Jewell to said Elizabeth Daniel as part hereof, to each of which the usual leave of reference is prayed, the one marked Exhibit A and the other B.

45 As to the state of the accounts, dealings, and indebtedness between the complainants and the said D. A. Jewell, as set forth in said bill, this defendant has no personal knowledge, and refers to the answer of said Jewell on that subject. This defendant, further answering, denies that the complainants are entitled to the relief or any part thereof in the said complaint demanded, and prays that the same advantage of the foregoing answer may be allowed her as if she had pleaded or demurred to the said bill of complaint, and she prays to be dismissed with her reasonable cost and charges in this behalf most wrongfully sustained.

LANIER & ANDERSON,
*Defendants' Solicitors.*

STATE OF GEORGIA, }
*Baldwin County.* }

Mrs. ELIZA P. JONES, one of the defendants named in the above answer, being duly sworn, deposes and says that she has read the foregoing answer and knows the contents thereof, and that the same is true of her own knowledge except as to matters therein stated in information and belief, which matters she believes to be true.

ELIZA P. JONES.

Sworn to and subscribed before me this 23rd day of June, 1884.

FLEMING G. GRIEVE,
*Notary Public, Baldwin County, Ga.*

*Clerk's Memorandum.*

Exhibits A and B are omitted here, the original documents being copied in the evidence and appearing later in this transcript. See pages 129–131.

46 Endorsement: Woodward, Baldwin & Co. *vs.* D. A. Jewell *et al.* Answer of Mrs. Eliza P. Jones, one of the defendants. Filed in office June 26th, 1884. L. M. Erwin, deputy clerk. Lanier & Anderson, compl'ts' sol's.

Afterwards, to wit, on the 18th day of October, 1884, came the complainants, by Hill and Harris, their solicitors, and filed in the clerk's office of said court their demurrer and answer to motion for reference to master in the words and figures following, to wit:

*Demurrer and Answer to Motion.*

In Circuit Court of United States for Southern District of Georgia, Western Division.

WOODWARD, BALDWIN & Co., Complainants, and DANIEL A. JEWELL *et al.*, Defendants. } In Equity.

Now come the complainants and by way of demurrer and answer to motion of defendant for reference to a master submit:

1st. That there can be no recovery or set-off for usury because the claim thereof is barred.

2nd. Because the amount of the account claimed by complainants against defendant was submitted to the defendant each and every month during the entire time covered by said transactions, and each and every one of the same was examined, approved, and acknowledged to be correct by said defendant in writing.

47 3rd. Because said motion is premature and there is no reason shown to the court why said motion should be granted and the expense and trouble of said reference incurred until the court, on hearing the case, shall determine that there is a reason for said reference.

4th. Because defendant attacks an account of long standing, which has been submitted to him item by item and approved by him, and does not surcharge or falsify said items or any thereof.

5th. Because the assignees on insolvency of said D. A. Jewell, appointed by him to wind up all his affairs, and into whose possession he put all his books and accounts, have audited, examined, and approved the account as claimed to be due by complainant-. This act of his representatives, in connection with his own act and written acknowledgment of the correctness of the account, may be well regarded as conclusive, and certainly ought to be in the absence of any advantage which would accrue to the defendant even if the reference was made and the master reported on a stale demand.

Respectfully submitted.

HILL & HARRIS,
*Solicitors for Complainants.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

ELIJAH P. SMITH, being duly sworn, deposes and says that he is a member of the firm of Woodward, Baldwin & Company, of New York city, New York; that his said firm of Woodward, Baldwin & Co. rendered from time to time true and correct statements
48 of the accounts current between his said firm and D. A. Jewell to the said D. A. Jewell, and the said D. A. Jewell examined said statements and approved and acknowledged them correct; that said statements were exact transcripts from the books of his said firm.

ELIJAH P. SMITH.

[SEAL.] Sworn to before me this 14th day of October, A. D. 1884.

WM. F. LETT,
*Commissioner for Georgia in New York.*

Endorsement: In equity. In fifth circuit court of United States for southern district of Georgia, western division. Woodward, Baldwin & Co., complainants, *vs.* Daniel A. Jewell, defendant. Answer to motion for reference to master. Filed Oct. 18th, 1884. Marion Erwin, dep. clerk. Hill & Harris, solicitors for defendants.

Afterwards, to wit, on the 27th day of October, came the complainants, by Hill & Harris, their solicitors, and filed in the clerk's office of said court an amendment to their bill in the words and figures following, to wit:

*Amendment to Bill.*

In the Circuit Court of the U. S. for Southern District of Georgia.
In Equity.

WOODWARD, BALDWIN & COMPANY, Complainants,
*versus*
DANIEL A. JEWELL *et al.*, Defendants.

49 Complainants, by leave of the court, amend their bill as follows:

Orators aver that at the time of the execution of the instruments and agreement exhibited to said bill as Exhibits A & B it was the object of complainants to secure themselves and of said Jewell to secure these complainants in the most ample manner and extent that was possible under the law, and it was their mutual object to convey to complainants the title to said property as security; but the said instrument and agreement were not artificially drawn, although sufficient to effectuate said intention. Wherefore complainants pray that said instrument and agreement may be construed by the court and that orators may have their rights decreed to them according to the true construction of said papers, and, if the same be construed to vest title in complainants, that the said lands be decreed to be sold, complainants' debts paid out of the proceeds, if sufficient, and the residue, should there be any, paid to whomsoever may be thereto entitled.

W. E. JACKSON,
HILL & HARRIS,
*Compl'ts' Sol'rs.*

*Acknowledgment of Service.*

Due and legal service acknowledged; copy received; all further service and notice waived.
October 27th, 1884.

LANIER & ANDERSON,
*Def'ts' Solicitors.*

50 Endorsement: In circuit court of the United States for the western division, southern district of Georgia. In equity. Woodward, Baldwin & Co., complainants, and D. A. Jewell *et al.*, defendant-. Amendment to bill. Filed in office October 27th, 1884. M. Erwin, deputy clerk. Hill & Harris, complainants' solicitors.

Afterwards, to wit, on the 27th day of October, 1884, came the complainant- and filed in the clerk's office of said court their replication in the words and figures following, to wit:

*Replication.*

STATE OF GEORGIA,
*Southern District, Western Division,* } *ss:*

In the Circuit Court of the United States. October Term, A. D. 1884.

WOODWARD, BALDWIN & Co.
*vs.*
D. A. JEWELL *et al.* } In Chancery.

The replication of Woodward, Baldwin & Co., complainants, to the answer of D. A. Jewell, S. P. Myrick, and Elizabeth Daniel.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendants, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto,
51 and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill have already prayed.

W. E. JACKSON,
HILL & HARRIS,
*Solicitors for Complainants.*

Endorsement: In circuit court of United States, southern district, western division, Georgia. In equity. Woodward, Baldwin & Co., complainants, and D. A. Jewell *et al.*, defendants. Replication. Filed in office October 27th, 1884. Marion Erwin, deputy clerk. Hill & Harris.

Afterwards, to wit, on the 27th day of October, 1884, at the October term, 1884, of said court, Honorable Jas. W. Locke, judge, presiding, the following orders were made and entered of record:

*Order Overruling Motion for Reference.*

52 In Equity. In Circuit Court of United States for Southern District, Western Division of Georgia.

WOODWARD, BALDWIN & Co., Complainants,
and
DANIEL A. JEWELL *et al.*, Defendants.

The motion in the above case for reference to a master coming on

before me, after argument heard, it is ordered and adjudged that the motion be overruled and denied without prejudice to right of parties to renew the same.

October 27th, 1884.

JAS. W. LOCKE, *Judge.*

Endorsement: In circuit court of United States for the southern district of Georgia, western division. Woodward, Baldwin & Co., complainants, and D. A. Jewell *et al.*, defendant-. Order overruling motion for reference. Filed October 27th, 1884. Marion Erwin, deputy clerk.

WOODWARD, BALDWIN & CO.
*vs.*
DANIEL A. JEWELL *et al.*

This matter having been fully heard upon motion of reference to a master, and it appearing, upon a careful examination of such matter of reference, that there are important questions involved in said case that should be heard and determined before a master
53 could understandingly inquire into or report upon such matters, it is ordered that such motion be denied without prejudice to a renewal of the same at any subsequent stage of the proceedings.

In open court.

Oct. 27th, 1884.

J. W. LOCKE, *Judge.*

Endorsement: In circuit court of the United States for the western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell. Order overruling motion for reference. Filed October 27th, 1884. L. M. Erwin, deputy clerk.

Afterwards, to wit, on the 21st day of January, 1885, at the October, 1884, adjournment term of said court, the Honorable Thomas Settle, judge for the northern district of Florida, presiding by assignment during the disability of the district judge for the southern district of Georgia, the following order was made and entered of record:

*Order Extending Time to Take Testimony.*

In Equity. In Circuit Court of United States for Southern District of Georgia.

WOODWARD, BALDWIN & CO.
*vs.*
D. A. JEWELL *et al.*

In the above cause, by consent of complainants and defendants and for sufficient cause shown, it is ordered that the time for
54 taking testimony in said cause be extended to April 1st, 1885.

January 21st, 1885.

THOMAS SETTLE, *Judge.*

Endorsement: United States circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* D. A. Jewell *et al.* Order extending time for taking testimony to April 1st, 1885. Filed in office January 21st, 1885. L. M. Erwin, deputy clerk.

Afterwards, to wit, on the 26th day of January, 1885, at the November, 1884, adjourned term of said court, the following order was made and entered of record:

*Order Appointing Examiner to Take Testimony.*

In Equity. In the Fifth Circuit Court of the United States for the Western Division, Southern District of Georgia.

WOODWARD, BALDWIN & CO.
*vs.*
D. A. JEWELL *et al.*

Upon application of the defendants in the above-stated cause for the appointment of an examiner to take the testimony of witnesses in said cause, as provided in the amendment to the rule of court number 67, made at December term, 1861, it is ordered by the court that E. F. Best, Esq., the present master of the court, be,
55 and he is hereby, appointed to take the testimony of any and all witnesses, either produced before him by complainants or by defendants or their counsel, who reside within one hundred miles of the city of Macon, the said examiner being authorized to give notice of the time and place of taking the testimony, which is to be done, the testimony taken and filed in office by said examiner, by the 1st day of April next.

January 26th, 1885.

THOMAS SETTLE, *Judge.*

We consent that the time of taking testimony in the above case shall be extended to the 17th April, 1885, which shall be the date of filing.

LANIER & ANDERSON,
*Defendants' Solicitors.*
WM. E. JACKSON,
*Complainants' Solicitor.*

Endorsement: In United States circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Order appointing commissioner to take testimony. Filed Jan. 28th, 1885. L. M. Erwin, deputy clerk. Lanier & Anderson, complainants' solicitors.

Afterwards, to wit, on the 5th day of August, 1885, came the complainants, by Hill & Harris, their solicitors, and filed in the clerk's office of said court their supplemental bill in the words and figures following, to wit:

56 *Supplemental Bill.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia. In Equity.

WOODWARD, BALDWIN & CO.
*versus*
DANIEL A. JEWELL, SETH P. MYRICK, *et al.*

Complainants, by this their supplemental bill, show to the court that since the filing of their original bill it has come to their knowledge that the defendant Seth P. Myrick has conveyed the land described in the bill as obtained by him from D. A. Jewell to his wife, Mrs. Elizabeth S. Myrick, who is a citizen of said division and district. A certified copy of such deed of conveyance is hereto annexed and leave of reference thereto prayed as often as may be necessary.

Complainants show that before filing said bill their counsel, W. E. Jackson, Esq., visited Baldwin county for the purpose of obtaining information relative to said land and the condition of the title, and made diligent search of the records, but, by some accident, omitted to discover said conveyance, and the erroneous impression into which complainants thus fell that said Seth P. Myrick held and claimed the ownership of said land was deepened by the fact that throughout the whole litigation defendant S. P. Myrick has plead and before the examiner testified as if the land was his own.

Complainants show that if this cause proceeded to a decree with the parties now before the court complainants would then have a new litigation with said Mrs. Elizabeth S. Myrick as a subse-
57 quent grantee from D. A. Jewell through her husband. She is a proper party to this bill, and, to avoid a multiplicity of suits and to settle in one decree the whole controver-y in respects to complainants' rights against said land, complainants pray that she be made a party defendant hereto. Complainants caver that the transfer or conveyance of said land by Seth P. Myrick to said Elizabeth S. Myrick was subject to all the rights of complainants against the said land under the said conveyance from D. A. Jewell to them, and which was of record at the time of said transfer to her.

If anything passed under said transfer to defendant from said Seth P. Myrick, it was only the equity of redemption therein.

Wherefore complainants pray—

1st. That the writ of subpœna shall issue, directed to said Elizabeth S. Myrick, who is a citizen of said division and district and who resides in Baldwin county, therein.

2nd. That said land described in the bill be decreed to be sold free from any cloud or incumbrance caused by defendant's said conveyance from her husband.

3rd. Such other and further relief as complainants' case may require or warrant.

W. E. JACKSON,
HILL & HARRIS,
*Solicitors for Complainants.*

*Acknowledgment of Service.*

I acknowledge due and legal service of this supplemental
58 bill, as well as the original, and — process and all further services as to both, May 30th, 1885.

ELIZABETH S. MYRICK.

*Clerk's Memorandum.*

The exhibit attached to this supplemental bill is omitted, the original document being copied in the evidence and appearing later on in this transcript. See page 133.

Endorsement: United States circuit court, southern district of Georgia, western division. May term, 1885. Woodward, Baldwin & Co. *vs.* Elizabeth S. Myrick. Supplemental bill. Filed in office this 5th day of August, 1885. L. M. Erwin, deputy clerk. Hill & Harris, compl'ts' sol's.

Afterwards, to wit, on the 23rd day of September, 1885, came the defendant D. A. Jewell, by his solicitors, Lanier & Anderson, and filed in the clerk's office of said court his answer to amended bill:

*D. A. Jewell's Answer to Amended Bill.*

In United States Fifth Circuit Court, Western Division, Southern District of Georgia. In Equity.

WOODWARD, BALDWIN & Co.
*vs.*
DANIEL A. JEWELL *et al.*

And now comes the said D. A. Jewell, one of the defendants to the bill in said cause, and, waiving no right to except to the errors and deficiencies in said bill as now amended, answers the bill as
59 amended by the amendment praying the court to construe the Exhibits A and B to the bill filed — day of ——, 1884. Respondent states that the original of which the said Exhibits A and B are substantial copies were executed at the same time, bear the same date, are one and the same transaction, the former referring to the latter, and constitute, as he is advised, believes, and so pleads, one and the same instrument, in the same manner and to the same effect as though the latter were word for word embraced in it, and that such instrument was and respondent states was intended to be a mortgage and no more than a mortgage, creating a lien only

on the property described, to secure the $5,000 specified therein, but reserving the right and power in respondent to sell said land so mortgaged and convey the entire title fee to the purchaser. Even up to some time after said bill was filed and until said amendment was made complainants and their solicitors treated said instrument as a mortgage. They filed said bill, declaring, as will therein appear, the same to be a mortgage and praying for its foreclosure as such. The part of said instrument marked Exhibit A in the bill provides, in the same manner as mortgage deeds usually do, that upon the payment of the $5,000.00 and accruing lawful interest when due at the end of three years, "according to the tenor of the instrument, bearing even date" with it, "between the same parties" (meaning the instrument copied in Exhibit B in the bill), then, as well, the said "indenture and the right to the property conveyed" should "cease, determine, and be void to all intents and purposes."

60 In the latter instrument, shown in said Exhibit B, it is recited in the latter part of it that "the security" which had therein before been referred to, "being mortgage deeds to real estate in the counties of Warren, Baldwin, Twiggs, and Sumter," had been given. The only lands in Baldwin county embraced in said "security," respondent states, were the lands described in the instrument shown in Exhibit A, and which were the lands sold by respondent to said S. P. Myrick and Mrs. Daniel. Complainants held no other mortgage on any land of respondent situated in Baldwin county at the date of said instruments, to wit, the 17th day of January, 1878. Following the recital just quoted in the instrument shown in said Exhibit B is this express provision: "The said Woodward, Baldwin & Co. further agree that the said Jewell shall have full right and permission to sell the property named in said deed and make title thereto, the proceeds of sale to go to the credit of said Woodward, Baldwin & Co." Respondent says that this clause referred to said instrument shown in Exhibit A, and, being part thereof, gave him and was intended to give him full power to sell the lands in question, and to convey the title, freed from said lien, to the purchasers. The said complainants had full confidence in respondent's purpose to do right, and it was a part of the contract that respondent should have and exercise this power. Respondent further states that the three thousand and two hundred acres of land which was embraced in one of the mortgages referred to in said Exhibit B to secure the nominal debt of $30,000, of which said $5,000 mentioned in the mortgage shown in Exhibit A was a part, was brought to sale by the commissioners

61 appointed under his deed of assignment in favor of his creditors for the benefit of complainants; that the same were sold under very unfavorable circumstances in one body and were knocked off to complainants at the nominal sum of $8,000.00, being then largely worth more than that sum, and that shortly after complainants realized by a sale thereof the sum of $10,000.00, the whole of which, instead of $8,000.00, should equitably be applied to any debt which respondent owes them, and he denies that he owes them any,

and, if not, should be paid to respondent by decree of the court under his former answer filed as a cross-bill; and this respondent prays the court accordingly. Respondent, having fully answered, prays to be discharged with costs, &c.

LANIER & ANDERSON,
*Resp't's Sol's.*

STATE OF GEORGIA,
*Hancock County.*

DANIEL A. JEWELL, one of the defendants, being duly sworn, deposeth and saith that he has read over the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated as information, and as to those matters he believes them to be true.

DANIEL A. JEWELL.

Sworn to and subscribed before me, on this 22d day of September, 1885.

W. H. JEWELL,
*Not. Pub., Hancock County.*

Endorsement: United States circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Answer of D. A. Jewell to amended bill. Filed Sept. 23rd, 1885. L. M. Erwin, deputy clerk. Lanier & Anderson.

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Afterwards, to wit, on the 23rd day of September, 1885, came the defendant, E. S. Myrick, and filed in the clerk's office of said court her answer in the words and figures following, to wit:

*Answer of Elizabeth S. Myrick.*

In United States Circuit Court, Western Division, Southern District of Georgia. In Equity.

WOODWARD, BALDWIN & Co.
*vs.*
DANIEL A. JEWELL *et al.*

The answer of Mrs. Elizabeth S. Myrick, one of the defendants in the above cause.

This defendant, now and at all times saving and reserving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the bill as amended contained, for answer thereto or so much thereof as this defendant is advised is material or necessary to be answered unto, answering saith that she has little, if any, personal knowledge of the transactions between the complainants and Daniel A. Jewell out of which arose the in-

debtedness claimed by complainants in said bill to be due them by said Jewell.

As to the land conveyed by S. P. Myrick, her late husband,
63 to her, referred to in the bill as amended, she states that her said husband having bought the land with the money that belonged to her as part of her separate estate he, shortly after purchasing the same from said Jewell, conveyed the title thereof to her; that the price so paid by him for said land was a full and fair one, and for which he purchased the entire fee therein and not the equity of redemption, as alleged; that she believes, and has no doubt the same is true, that her said husband bought said land from said Jewell in the utmost good faith, he believing, as she believed, and that he so conveyed the title to her, that said Jewell had the right to sell said land at such price as he deemed reasonable and best, free from any lien or claim therein of the said complainants or others, and convey the unencumbered title to the purchaser.

As to the Exhibits A & B attached to the bill this respondent states that she is advised and believes, and now here so pleads, that the said originals being executed at the same time as part of one and the same transaction, the latter being referred to in the former, constituted but one instrument or deed in the same manner, to the same extent, and having the same effect as though the terms of the latter had been incorporated in the former, and that such instrument was, and was intended to be, a mortgage, creating no more than a lien on said property therein specified to secure the sum of $5,000.00, but reserving the right and power in said Jewell to sell the land so mortgaged and convey title in full to a purchaser. As will
64 appear by the pleadings the complainants and their solicitors filed said bill for the specific purpose for foreclosing said instrument as a mortgage. The part of said instrument marked Exhibit A in the bill provides, in the same manner as mortgage deeds usually do, that upon the payment of the $5,000.00 when due, being three years thereafter, with lawful interest, "according to the tenor of the instrument, bearing even date" with it, "between the same parties," then as well the said "indenture and the right to the property conveyed" should "cease, determine, and be void to all intents and purposes." The instrument referred to was that shown in Exhibit B to the bill, in the latter part of which it is recited: "The security" (which has been referred to therein) "being mortgage deeds to real estate in the counties of Warren, Baldwin, Twiggs, and Sumter, in the State of Georgia."

The lands in Baldwin, the respondent states, and lands embraced in the mortgage described in Exhibit A attached to the bill, and the recital just quoted is followed (and said Exhibit B concludes) with this express provision: "The said Woodward, Baldwin & Co. further agree that the said Jewell shall have full right and permission to sell the property named in said deed and make titles thereto, the proceeds of sale to go to the credit of the said Woodward, Baldwin & Co."

Respondent insists that this clause gave said Jewell the power to sell the land which her late husband so bought from him freed from

said lien, and she is advised, believes, and so pleads that the said purchaser did not have to look to the application of the pur-
65 chase-money; that if any one of the parties is to suffer from the failure to rightly apply the purchase-money the innocent purchaser ought not to be the one, but rather the complainants, who, by the said writing, invested the seller with the power to do injury.

Respondent says that she is informed and believes that the only land mor-gaged by said Jewell to complainants, referred to in said Exhibits A & B as in Baldwin county, was the land so bought by her late husband from said Jewell and by Mrs. Daniel from said Jewell.

Respondent further states that she is informed and believes that the 3,000 acres of land in Twiggs county mortgaged as stated were sold at the instance of Woodward, Baldwin & Co. at public sale and bid off by them at the nominal sum of $8,000.00, not being near the value of said land, and sale being made under very unfavorable circumstances, and that immediately after and with little or no inconvenience or expense they sold the same for $10,000, the said land being then worth that and more and the said Jewell being unable to redeem it. Respondent claims that if said complainants should have the right to call on her for any part of said purchase-money for the said land she so received from her husband that respondent should account for and be required to allow the $2,000 so received on the sale of said Twiggs land as profit.

Respondent, having answered so much of said bill as she is advised is necessary for her to make answer to, prays to be discharged with costs, &c.

LANIER & ANDERSON,
*Respondent's Sol's.*

66 STATE OF GEORGIA, }
*Bibb County.* }

Mrs. ELIZABETH S. MYRICK, one of the defendants to the bill as amended, hereinbefore stated, *who* being duly sworn, says that she has had the foregoing answer read over to her and knows the contents thereof, and that the same is true of her own knowledge except as to matters therein stated on information and belief, and as to those matters she believes them to be true.

E. S. MYRICK.

[SEAL.] Sworn to and subscribed before me this 19th day of September, 1885.

FELIX C. CAMP,
*Not. Pub., Bibb Co., Ga.*

Endorsement: In United States circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* D. A. Jewell *et al.* Answer of Mrs. E. S. Myrick. Filed Sep. 23, 1885. L. M. Erwin, deputy clerk. Lanier & Anderson.

Afterwards, to wit, on the 29th day of October, 1885, at the October term, 1885, of said court, the Honorable Emory Speer, district judge for the southern district of Georgia, presiding, a decree was made and entered of record in the words and figures following, to wit:

*Decree.*

In the Fifth Circuit Court of the U. S. for the Western Division, Southern District of Georgia.

WOODWARD, BALDWIN & Co.
*vs.*
DANIEL A. JEWELL, Mrs. ELZABETH MYRICK, *et al.*
} Bill in Equity for Relief, &c.

67 This cause came on to be heard at this term of said court and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the prayers of the complainants in said bill be denied, and that the said bill be dismissed with costs of suit against the complainants in favor of the defendants, to be taxed by the clerk of this court.

In open court October 29th, 1885.

EMORY SPEER,
*U. S. Judge.*

Endorsement: United States circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Decree. Filed Oct. 29, 1885. M. Erwin, deputy clerk. Lanier & Anderson.

Afterwards, to wit, on the 30th day of December, 1885, came the complainants, by Hill and Harris, their solicitors, and filed in the clerk's office of said court their petition for rehearing in the words and figures following, to wit:

*Petition for Rehearing.*

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

WOODWARD, BALDWIN & Co.
*vs.*
D. A. JEWELL *et al.*
} In Equity.

68 To the honorable judges of said court:

Now, during the term of said court at which the final decree in the above cause was rendered, come Woodward, Baldwin & Co., complainants in said case, and petition the court for a rehearing therein in accordance with the rule in equity, and for special matter or cause in which such rehearing is applied for, and all of which is apparent of record, petitioners show that said decree is erroneous upon the following grounds:

First. The writing executed by complainants at the time the de-

fendant Jewell executed the security deeds (copies of which are appended to the bill) contains a stipulation that in the case of any sale of the lands by Jewell the proceeds should go to the credit of complainants. In the instance of the transaction between Jewell and Mrs. Daniel the evidence, which is part of the record, shows that Jewell did not sell the land, but exchanged it with Mrs. Daniels, General Myrick acting as her agent, and he, as such agent, had full notice of the rights of complainants. Petitioners submit that inasmuch as said Jewell received for the land upon which complainants had a security no money which could go to the credit of complainants, but other land which would be free from the lien of the security, this constitutes a breach of trust which was implied in the very transaction, and that thus said Mrs. Daniels was put upon notice of the breach of trust com-itted by said Jewell, and that her representative is not in equity entitled to hold said land free from the lien of complainants. The testimony of Gen. Myrick
69 in regard to his transaction with —— Jewell makes it at least probable that the whole or a part of the consideration was also land, and that he also was chargeable with notice of a similar breach and ought not to hold the land received by him free from the rights of complainants therein.

Second. Because the evidence, which is part of the record, shows that the defendant Myrick and that Mrs. Daniels, through her agent, Myrick, had full and actual notice of the rights of complainants under their contract with Jewell. They cannot, therefore, in any sense be regarded or treated as *bona fide* purchasers without notice.

Third. Because the record of the deeds given by defendants to complainants put the said Myrick and Daniel upon constructive notice of all the rights of complainants. Complainants submit that having actual and constructive notice defendants were bound to see to the application of the purchase-money.

Fourth. Because the court erred in holding that the power of attorney contained in the writing executed by complainants to Jewell was sufficient to pass title. Petitioners submit that the said Jewell did not even attempt to exercise any power in the name of the principal, but sold the land as his own, without reference to such power, and that consequently the title did not pass; but even if said transaction is treated as an attempt to exercise such power petitioners submit that such an attempt could not be made available in favor of the other parties who were affected by full notice of all the facts and of the defects in the execution of the power.

70 Fifth. Because said decree is contrary to the equity of the case. The evidence, which is of record, shows that if the defendants Myrick and Daniel are decreed to pay the debt of complainants they will receive the land at a valuation, including the purchase-money paid by them, less than the sums at which they have given in the same for taxes, and which represents a valuation below its true value.

Sixth. Petitioners pray that if said decree be not entirely reversed that it may be modified in the following particulars:

"First. That the land conveyed to Mrs. Daniel may be decreed to

be subject to complainants' debt upon the ground that the transaction between Jewell and herself was a breach of trust of which she had full notice.

"Second. That if it be decreed that defendants have any interest in said lands that petitioners may be permitted to advance them the full amount which they paid, with interest from the date of payment, the defendants accounting for the rents, and that thereupon petitioners may be entitled to a decree declaring them the owners of the land."

Seventh. Petitioners pray for such other and further relief as the nature of the case upon a rehearing may require.

WILLIAM E. JACKSON,
HILL & HARRIS,
*Solicitors for Complainants.*

71 Afterwards, to wit, on the 7th day of January, 1886, an order was made by Honorable Emory Speer, district judge for the southern district of Georgia, in the words and figures following, to wit:

*Order Granting Rehearing.*

Upon considering the foregoing petition for rehearing—

Ordered that the same be granted, the rehearing to be had at the May term of the circuit court for the western division of the southern district of Georgia.

At chambers, Jan. 7th, 1886.

EMORY SPEER, *U. S. Judge.*

Endorsement: United States circuit court, southern district of Georgia, western division. October term, 1885. In equity. Woodward, Baldwin & Company *vs.* D. A. Jewell *et al.* Original petition for rehearing. Filed in office this 30th day of December, 1885. L. M. Erwin, deputy clerk. Hill & Harris, plaintiffs' attorneys.

Afterwards, to wit, on the 17th day of June, 1886, at the May term, 1887, of said court, a final decree was made and entered of record in the words and figures following, to wit:

*Decree on Rehearing Affirming Original Decree.*

72 WOODWARD, BALDWIN & CO.
*vs.*
D. A. JEWELL *et al.*

Petition for rehearing on bill filed by petitioners, and on which final decree was rendered at the last term of the U. S. circuit court for the western division of the southern district of Georgia.

The above-stated case came on to be heard on the petition setting forth the grounds on which a reversal and modification of said decree was asked, and was argued by counsel; whereupon the court,

after due consideration, now hereby orders, adjudges, and decrees that the said decree heretofore rendered be, and the same is hereby, confirmed, and the prayers of said petition asking a reversal and modification of said decree are denied.

It is further adjudged and decreed that the costs of this proceeding—the same to be taxed by the clerk—be paid by the said Woodward, Baldwin & Company.

Done in open court at Macon, Georgia, this 17th day of June, 1886.

EMORY SPEER, *Judge.*

Endorsement: United States circuit court, southern district of Georgia, western division. October term, 1885. Woodward, Baldwin & Co. *vs.* D. A. Jewell *et al.* Decree on rehearing affirming original decree. Filed June 17th, 1886. M. Erwin, deputy clerk. Lanier & Anderson.

Afterwards, to wit, on the 7th day of July, 1887, at the May,
73 1886, term of said court, came the complainants, by W. E. Jackson and Hill & Harris, their solicitors, and filed in the clerk's office of said court their appeal in the words and figures following, to wit:

*Entry of Appeal to Supreme Court.*

In Circuit Court of the United States for Western Division of Southern District of Georgia.

WOODWARD, BALDWIN & COMPANY, Complainants,
*vs.*
DANIEL A. JEWELL *et al.*, Defendant-.

The above-named complainants, being a firm composed of William A. Baldwin, Jr., a citizen of the State of Maryland; Christopher C. Baldwin and Reginald T. Woodward, citizens of the State of New York, conceive themselves aggrieved by the final decree in said cause, which involves an amount exceeding $5,000, which decree was rendered at the October term, 1885, of said court, and confirmed upon a rehearing by order and decree granted June 11th, 1886.

And having given due notice by citation to the defendants in said cause of the entry of this appeal at this the May term, 1887, of said court, and said defendants being present in court, complainants do hereby appeal—

1st. From the final decree in said cause rendered October 29th, 1885, at the October term, 1885, of said court.

2nd. From the order and decree at May term, 1886, granted June 11th, 1886, confirming, upon rehearing, said decree rendered at Oct. term, 1885.

74 Complainants now here tender bond according to the statute in such cases, and pray that their appeal be allowed; that said bond be approved; that a transcript of the record, evidence, and proceedings in the cause, duly authenticated, may be sent to the

Supreme Court of the United States, and that citation to said defendants shall be issued as provided by law.

WILLIAM E. JACKSON,
HILL & HARRIS,
*Complainants' Solicitors.*

Endorsement: Circuit court U. S., southern dist., west div., Ga. Woodward, Baldwin & Company *vs.* Daniel A. Jewell *et al.* Entry of appeal to Supreme Court. Filed in office July 7th, 1887, at May term, 1887. Marion Erwin, dep. clerk. W. E. Jackson, Hill & Harris, compl'ts' sol's.

Afterwards, to wit, on the 7th day of July, 1887, came the complainants, by Hill & Harris, their solicitors, and filed in the clerk's office their appeal bond in the words and figures following, to wit:

*Appeal Bond.*

In Circuit Court of U. S. for Western Division, Southern District of Georgia. In Equity.

WOODWARD, BALDWIN & CO.
*vs.*
DANIEL A. JEWELL *et al.*

Know all men by these presents that we, Woodward, Baldwin & Company, a firm composed of Wm. H. Baldwin, Jr., Christopher C. Baldwin, and Reginald T. Woodward, as principals, and C. H. Phinizy, as surety, are held and bound unto the defendants in above cause, to wit, Daniel A. Jewell, Elizabeth S. Myrick, Mrs. Elizabeth Daniel, Seth P. Myrick, and Mrs. Eliza P. Jones, in the sum of five hundred ($500) dollars, to be paid to said defendants or their executors or administrators; for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Signed and sealed this July 7th, 1887.

75

Whereupon the said complainants have entered an appeal in said cause which has been allowed by the circuit court to the Supreme Court of the United States: Now, therefore, the condition of this obligation is such that if the said complainants shall prosecute their appeal to effect and answer all costs in the event they shall fail to make their plea good, then this obligation shall be void; else of full force and effect.

WOODWARD, BALDWIN & COMPANY,
By HILL & HARRIS, *Att'ys.* [L. S.]
C. H. PHINIZY, *Surety,* [L. S.]
By W. B. HILL, *Att'y-in-Fact,*
*Acting by Written Power of Attorney Hereto Annexed.*

*Power of Attorney.*

STATE OF GEORGIA,
*Richmond County.*

76 Know all men by these presents that I, Charles H. Phinizy of the county and State aforesaid, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Walter B. Hill, of the county of Bibb and State aforesaid, my true and lawful attorney for me and in my name, place, and stead to duly and legally execute and sign my name as security to such bond of Woodward, Baldwin & Co., not exceeding five hundred dollars, as may be required by the circuit court of the United States for the southern district of Georgia in the case of said Woodward, Baldwin & Co. *versus* D. A. Jewell *et al.*, therein pending, said bond to be given as security for court costs on appeal of said case to the Supreme Court of the United States, giving and granting unto my said attorney full and whole power and authority in and about the premises, and for me and in my name to do, execute, and perform as largely and amply to all intents and purposes as I might or could do if I were personally present.

In witness whereof I have hereunto set my hand and seal the 5th day of July, A. D. 1887.

C. H. PHINIZY. [L. S.]

Signed, sealed, and delivered in presence of—
A. S. MORRIS.
HENRY C. GOODRICH,
*Notary Public, Richmond Co., Ga.*

Endorsement: Circ. c't U. S., so. dist., W. D. Ga. Woodward, Baldwin & Co. *vs.* D. A. Jewell *et al.* Appeal bond. Filed July 7, 1887. M. Erwin, dep. clerk.

77 Afterwards, to wit, on the 7th day of July, 1887, at the May term, 1887, of said court, an order was made and entered of record in the words and figures following, to wit:

*Order Allowing Appeal and Approving Bond.*

Circuit Court U. S. for the Western Division, Southern District of Georgia. May Term, 1887.

WOODWARD, BALDWIN & CO., Complainants,
*vs.*
DANIEL A. JEWELL *et al.*, Defendants.

It appearing to the court that the said complainants have entered an appeal to the Supreme Court (due notice thereof having been made and served upon the defendants), and that said complainants tender bond, as provided by statute—

It is ordered and adjudged—

1st. That said appeal be allowed.

2nd. That said bond tendered by complainants for cost, whereon C. H. Phinizy is surety, be, and the same is hereby, approved.

In open court, July 7th, 1887.

EMORY SPEER, *Judge.*

Endorsement: Circ. c't U. S., so. dist., W. D. Ga. Woodward. Baldwin & Co. *vs.* D. A. Jewell *et al.* Order allowing appeal and approving bond. Filed July 7th, 1887. M. Erwin, dep. clerk.

78 Afterwards, to wit, on the 7th day of July, 1887, came the complainants, by Hill & Harris, their solicitors, and filed in the clerk's office their citation in the words and figures following, to wit:

*Citation.*

In the Fifth Circuit Court of the U. S. for the Western Division of the Southern District of Georgia.

WOODWARD, BALDWIN & CO.
*vs.*
DANIEL A. JEWELL *et al.*

To Daniel A. Jewell, of Hancock county; Mrs. Elizabeth S. Myrick, Stith P. Myrick, Mrs. Elizabeth Daniel, and Mrs. Eliza P. Jones, of Baldwin county, citizens of said district and division:

We, Woodward, Baldwin & Co., a firm composed of William H. Baldwin, Jr., a citizen of the State of Maryland; Christopher G. Baldwin, and Reginald T. Woodward, citizens of the State of New York, doing business under the said firm name of Woodward, Baldwin & Co., hereby notify you that in the matter of the order and decree in favor of the defendants in the above-stated case against said Woodward, Baldwin & Co., which decree was rendered at the October term, 1885, of said court, to wit, on the 29th day of October, 1885, whereby the prayers of complainants' bill were denied and the bill decreed to be dismissed, and in the matter of the subsequent order upon a rehearing, which subsequent order confirming said decree was rendered on the 11th day of June, 1886, by virtue of which said decree and order the court refused to declare

79 subject to the debt of the complainants alleged in bill the 760 acres of land known as the Hurt Place and described in the exhibits attached to the bill and 750 acres of the homestead tract of said Myrick, likewise described in exhibits, including 356 acres which was conveyed by said Jewell to Mrs. Elizabeth Daniel and now claimed to be the property of Mrs. Elizabeth P. Jones, and upon which property the court refused to grant a decree of foreclosure prayed for in such bill, that we will during the May term, 1887, of said court, to be held in the city of Macon, county of Bibb and State of Georgia, petition said court for an appeal from said order and decree to the Supreme Court of the United States, and we will likewise execute and tender to said court a bond as required by

law, and pray the court for an allowance of the appeal on the proffer of said bond and for an order to prosecute said appeal. This second day of May, 1887.

WOODWARD, BALDWIN & CO.,
By WILLIAM E. JACKSON,
HILL & HARRIS, *Solicitors.*

*Acknowledgment of Service.*

Due and legal service of the foregoing citation acknowledged for each and all of said defendants. Copy received and all further service waived.

LANIER & ANDERSON,
*Def'ts' Solicitors.*

This June 24th, 1887.

80 Endorsement: Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Citation for appeal. Filed in office this July 7th, 1887. M. Erwin, dep. clerk.

*Evidence Introduced by Complainants.*

Interrogatories for Wm. H. Baldwin, Jr., E. P. Smith, and R. T. Woodward.

In Equity. In Circuit Court of United States for Southern District of Georgia, Western Division.

WOODWARD, BALDWIN & Co., Complainants,
and
DANIEL A. JEWELL *et al.*, Defendants.

Interrogatories to be exhibited to William H. Baldwin, Jr., E. P. Smith, and R. T. Woodward, members of the firm of Woodward, Baldwin & Co., who are material witnesses for complainant and who reside in the city, county, and State of New York.

1st. State in what amount the defendant, D. A. Jewell, was indebted to you at the time of his assignment. Attach a copy of the statement which you enclosed to him in your letter of May 4th, 1883.

What is his present indebtedness to you?

What was the amount of his indebtedness to you in Feb-
81 ruary, 1882?

How near did that indebtedness approach the limit of his right to draw on you? Annex copies of the account current you sent him February 1st, 1882, and March 1st, 1882.

2nd. State whether in goods, cash, or otherwise you received the proceeds of the sales by Jewell of lands conveyed by him to Myrick and Mrs. Daniel; if so, how and when? When did you first hear of these conveyances, and when, if ever, was your consent asked or given?

3rd. After ascertaining that he had made these conveyances, state

whether D. A. Jewell accounted to you for the proceeds, and whether in any way by his not drawing on you or otherwise any arrangement was entered into by which you received an equivalent therefor. Annex copies of the accounts current you sent him March 1st and April 1st, 1883.

4th. State all, and do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

W. E. JACKSON,
HILL & HARRIS,
*Compl'ts' Sol'rs.*

82 We shall object to the evidence given in the foregoing direct interrogatories, and now object to the issue of commission to take the testimony called for by the interrogatories, on the ground that the time has passed within which testimony by commission should have been taken in the case.

We also object to the 1st int'y because illegal, it being leading, and also because it refers to a letter which is not attached.

If these objections are overruled and the answers allowed in evidence, then we ask by—

Cross-int'y 1st. Please state what was the am't and value of the goods and am't of the money and other remittances and their cash value sent you by D. A. Jewell after the 1st day of Feb'y, 1882?

Cross-int'y 2nd. If you state that said Jewell was indebted to you, as enquired about in direct int's, and you state the am't of such indebtedness, please state also the computation by which you arrived at it, and give the particulars of both principal and interest.

LANIER & ANDERSON,
*Def'ts' Sol's.*

Endorsement: In U. S. circuit court, western division, southern district of Georgia. Interrogatories. Woodward, Baldwin & Co. *versus* D. A. Jewell *et al.* Due and legal service of within interrogatories acknowledged. Copy waived. Let commission issue, but subject to the objections noted within. Oct. 5, 1885. Lanier & Anderson, def'ts' sol's. Filed Oct. 9, 1885. L. M. Erwin, deputy clerk.

83 *Clerk's Memorandum.*

Commission was issued, executed, and returned in due form of law, and, no exception having been taken thereto, the said commission with all formal entries appertaining to the execution and return are here omitted as unnecessarily encumbering the record. The answers of the witnesses to said interrogatories are as follows:

*Depositions of E. P. Smith.*

In Equity. In the Circuit Court of the United States for the Southern District of Georgia.

WOODWARD, BALDWIN & Co.
*vs.*
DANIEL A. JEWELL.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned, commissioners, in virtue of the annexed commission, issueing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing in the city of New York, in the county and State of New York, on this 14th day of October, A. D. 1885.

ELIJAH P. SMITH, aged 45 years, being duly sworn, answers and deposes as follows, to wit:

1st Int. To the first direct interrogatory the witness, answering, saith: $24,882.46. Statement enclosed to him in a letter of May 4th, 1883, is hereto attached and marked Exhibit A; letter
84 marked Exhibit F. His present indebtedness is $4,099.13 and interest. The amount of his indebtedness in February, 1882, was $32,345.64. Giving him credit for goods and the $30,000.00 agreed upon, he was overdrawn about $1,400.00. Copies of the account current are hereto annexed and marked Exhibits B and C.

2nd Int. To the second direct interrogatory the witness, answering, saith: Never received proceeds in any shape or form. We became aware of convevances in July, 1882, and wrote him July 22nd, 1882, for explanation. Our consent was never asked or given.

3rd Int. To the third direct interrogatory the witness, answering, saith: He never accounted in any way, nor did we receive any equivalent in cash or merchandise, for the land sold by him to Myrick and Mrs. Daniel, and no arrangement was ever entered into allowing him to sell it or retain the proceeds. Copies of accounts current are hereto annexed and marked Exhibits D and E.

4th Int. To the fourth direct interrogatory the witness, answering, saith: Having fully stated all facts in previous affidavits, &c., we can think of nothing that would be of material benefit or advantage.

*Cross-Interrogatories.*

85 1st X Int. To the first cross-interrogatory the witness, answering, saith: The amount of goods consigned us by Jewell since February, 1882, up to the time of his failure were—

328 bales $\frac{7}{8}$ shirting, 1,100 yds. each, which were sold from 5¼ to 6c. p'r yard.

416 bales $\frac{4}{4}$ sheeting, 1,100 yds. each, which was sold at 6 to 7c. per yard.

13 bales cotton kerseys, 500 yds. each, which were sold at 12½ to 13c. per yard.

5 bales 8-oz. duck, 600 yds. each, which were sold at 9 to 9¾c. per yard.

Besides 4 bales kerseys which were held at Jewell's mills for our account, and for which was substituted later 6 bales ⅘ sheeting, included in above.

The value of the goods varied from time to time according to the market, which will account for the difference in prices; never received anything but goods from Jewell during this period, and advanced him cash upon all these goods.

2nd X Int. To the second cross-interrogatory the witness, answering, saith: We rendered Jewell monthly accounts of sales and accounts current, as requested by him, all of which he acknowledged the receipt of and as being correct, and we refer to these for any information desired.

Interest was computed in the regular way, as is customary and as per our agreement with Jewell.

86 The testimony of the witness Wm. H. Baldwin, Jr., cannot be taken on this commission, as he is absent from the State of New York and in the State of Maryland. I know, however, that he is not acquainted with the matters enquired about in these interrogatories.

ELIJAH P. SMITH.

Answered, subscribed, and sworn to before us this 14th day of October, 1885.

VINCENT ROSEMON, [SEAL.]
*Commissioner.*
AND'W C. SHARP, [SEAL.]
*Commissioner.*

*Depositions of R. T. Woodward.*

R. T. WOODWARD, aged 45 years, being duly sworn, answers and deposeth as follows, to wit:

1st Int. To the first direct interrogatory the witness, answering, saith: At the date of the assignment made by the defendant D. A. Jewell was indebted to my firm of Woodward, Baldwin & Co., the plaintiffs in this action, in the sum of $24,882.46. I herewith produce a copy of the statement which we enclosed to him in our letter of May 4th, 1883, and the same is attached to my deposition
87 and marked Exhibit A. He is indebted to us at the present time in the sum of $4,099.13, with interest thereon. In February, 1882, he was indebted to us in the sum of $32,345.64. He overdrew his account about $1,400.00. I hereto annex copies of the accounts current which we sent to him Feb. 1st, 1882, and March 1st, 1882, and the same are marked, respectively, Exhibits B & C.

2nd Int. To the second direct interrogatory the witness, answering, saith: We never received from him in any shape or form, whether in goods, cash, or otherwise, any proceeds of any sale by Jewell of lands conveyed by him to Myrick and Mrs. Daniel. We

first heard of these conveyances in the month of July, 1882. Our consent was never asked or given.

3rd Int. To the 3rd direct interrogatory the witness, answering, saith: No; he never accounted to us for the proceeds. No arrangement of any kind was ever entered into by which we received an equivalent therefor, and we never received an equivalent therefor. I annex hereto copies of our accounts current which were sent to him on March 1st and April 1st, 1883, and the same are marked, respectively, Exhibits D and E.

4th Int. To the fourth direct interrogatory the witness, an-
88 swering, saith: I think I have stated all that I know of benefit or advantage to the parties at issue in this cause. I desire to add further that the witness Wm. H. Baldwin, Jr., is in Baltimore, Maryland, so that his deposition cannot now be taken. I know, however, that he is not conversant with the matters enquired about.

Cross-examination:

1st X Int. To the 1st cross-interrogatory the witness, answering, saith: The amount of goods consigned to us by Jewell after Feb. 1st, 1882, was—

328 bales of $\frac{7}{8}$ shirting, containing 1,100 yds. each. These goods were sold at from 5¼ to 6c. per yard.

416 bales of $\frac{4}{4}$ sheeting, containing 1,100 yds. each. These goods were sold at from 6 to 7c. per yard.

13 bales cotton kerseys, containing 500 yds. each, which were sold at from 12½ to 13c. per yard.

Also 5 bales of 8-oz. duck, containing 600 yds. each; sold at from 9 to 9¾c. per yard.

There were also 4 bales of kerseys held at Jewell's mills for our account. For these there were substituted subsequently 6 bales of $\frac{4}{4}$ sheeting, which are included in the goods above enumerated. The fluctuations in the market caused difference in the prices at which the goods were sold, as above stated.

We never received any money or other remittance from him during the period mentioned in interrogatory.

89 We advanced him cash upon all the goods received from him mentioned in this answer.

2 X Int. To the 2nd interrogatory the witness, answering, saith: Accounts of sale were rendered to Jewell monthly, and also accounts current. He acknowledged the correctness of all the accounts sent him. The interest was calculated in the customary way and he has always admitted the correctness of the accounts.

R. T. WOODWARD.

Answered, subscribed, and sworn to before us this 14th day of October, 1885.

VINCENT ROSEMON, [SEAL.]
*Commissioner.*
AND'W C. SHARP, [SEAL.]
*Commissioner.*

90 EXHIBIT A.

Mr. D. A. Jewell in % with Woodward, Baldwin & Co.

| | | | | | |
|---|---|---|---|---|---|
| 1883. | | | 1883. | | |
| April 16 | To balance due April 16, '83 ... | 29,332 15 | May 4 | By sales due Sept. 11-14, 1883.. | 4,673 20 |
| May 4 | " interest..... | 223 51 | " " | balance ..... | 24,882 46 |
| | | 29,555 66 | | | 29,555 66 |
| 1883. | | | | | |
| May 4 | To balance due May 4, '83..... | 24,882 46 | | | |

R. T. WOODWARD.
ELIJAH P. SMITH.

E. E.
New York, May 4, 1883.

WOODWARD, BALDWIN & CO.,
P'r SMOOT.

Copy.

91 EXHIBIT B.

Mr. D. A. Jewell in % with Woodward, Baldwin & Co.

| | | | | | |
|---|---|---|---|---|---|
| 1881. | | | 1882. | | |
| Dec'r 31 | To balance due December 31, '81. | 32,217 51 | Jan'y 31 | By sales due Feb. 7-10,'82.. | 447 46 |
| | | | " " | " balance..... | 32,345 64 |
| 1882. | | | | | |
| Janu'ry 13 | " freight on 6 bales to — Louis. | 10 06 | | | |
| " 17 | " do. on 5 bales to —..... | 7 75 | | | |
| " 30 | " cash p'd def'ts..... ..... | 360 00 | | | |
| " 31 | " marine insurance..... | 2 90 | | | |
| " " | " interest..... | 194 88 | | | |
| | | 32,793 10 | | | 32,793 10 |
| 1882. | | | | | |
| Janu'y 31 | To balance due January 31, '82. | 32,345 64 | | | |

R. T. WOODWARD.
ELIJAH P. SMITH.

E. E.
New York, January 31, 1882.

WOODWARD, BALDWIN & CO.,
P'r SMOOT.

Copy.

92 EXHIBIT C.

Mr. D. A. Jewell in % with Woodward, Baldwin & Co.

| | | | | | |
|---|---|---|---|---|---|
| 1882. | | | | | |
| Janu'y 31 | To balance due Janu'y 31, '82. | 32,345 64 | Feb'y 28 | By sales due April 3-6, 1882. | 1,435 02 |
| Febru'y 13 | " cash paid, drafts ..... | 350 00 | " " | By balance..... | 31,761 39 |
| " 18 | " do. " " ..... | 300 00 | | | |
| " 28 | " marine insurance..... | 12 76 | | | |
| " " | " interest..... | 188 01 | | | |
| | | 33,196 41 | | | 33,196 41 |
| 1882. | | | | | |
| Febr'y 28 | To balance due February 28, '82. | 31,761 39 | | | |

R. T. WOODWARD.
ELIJAH P. SMITH.

E. E.
New York, February 28, 1882.

WOODWARD, BALDWIN & CO.,
P'r SMOOT.

Copy.

93 EXHIBIT D.

Mr. D. A. Jewell in % with Woodward, Baldwin & Co.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1883. | | | | 1883. | | |
| January 31 | To balance due January 31, '83. | 33,284 39 | | Feb'y 28 | By sales due April 3, '83.... | 1,989 80 |
| February 2 | " cash | 400 00 | | " " | " balance | 32,974 80 |
| " 5 | " do. | 250 00 | | | | |
| " " | " fr't 5 bales Mackey, Nisbet & Co. | 6 40 | | | | |
| " 9 | " cash | 468 74 | | | | |
| " 16 | " do. | 350 00 | | | | |
| " 28 | " marine insurance | 5 03 | | | | |
| " " | " interest | 200 04 | | | | |
| | | 34,964 60 | | | | 34,964 60 |
| 1883. | | | | | | |
| February 28 | To balance due February 28, '83. | 32,974 80 | | | | |

R. T. WOODWARD.
ELIJAH P. SMITH.

E. E.
New York, February 28, 1883.

WOODWARD, BALDWIN & CO.,
P'r SMOOT.

Copy.

94 EXHIBIT E.

Mr. D. A. Jewell in % with Woodward, Baldwin & Co.

| | | | | | | |
|---|---|---|---|---|---|---|
| 1883. | | | | 1883. | | |
| February 28 | To balance due Feb. 28, '83. | 32,974 80 | | March 31 | By sales due May 24-27, '83. | 3,653 45 |
| March 6 | " cash p'd, telegram | 75 | | " " | " balance | 29,581 59 |
| " " | " fr't 9 bales to St. Louis. | 16 50 | | | | |
| " 31 | " marine insurance | 3 75 | | | | |
| " " | interest | 239 24 | | | | |
| | | 33,235 04 | | | | 33,235 04 |
| 1883. | | | | | | |
| March 21 | To balance due March 31, '83. | 29,581 59 | | | | |

R. T. WOODWARD.
ELIJAH P. SMITH.

E. E.
New York, March 31, 1883.

WOODWARD, BALDWIN & CO.,
P'r SMOOT.

Copy.

95 EXHIBIT F.

Copy.

Wm. H. Baldwin, Jr. E. P. Smith. R. T. Woodward.

Office of Woodward, Baldwin & Co., 43 & 45 Worth street.

P. O. box 2693.

NEW YORK, *May* 4, 1883.

Mr. D. A. Jewell, Jewell, Ga.

DEAR SIR: We hand you ac. sales closing your goods & ac. current showing a balance due us of $24,882.46, which we hope will be found correct.

Yours truly, WOODWARD, BALDWIN & CO.,
P'r SMOOT.

ELIJAH P. SMITH.

96 *Interrogatories for T. P. Wardlaw.*

United States Circuit Court, Southern District of Georgia, Eastern Division.

WOODWARD, BALDWIN & CO.
*vs.*
D. A. JEWELL *et al.*

Interrogatories to be propounded to T. Perrin Wardlaw, a material witness for complainants, who resides in the city of Augusta, State of Georgia, and more than one hundred miles from the city of Macon, Georgia, the place where said court is held.

1st. Where do you reside, and what is your occupation, and where did you reside in the summer of July, 1882?

2nd. Do you know any of the parties to the above-stated case; and, if yea, who?

3rd. Were you employed in the summer of 1882 by Woodward, Baldwin & Co. or any one for them, and for what purpose?

4th. If you were so employed did you ever go, about July, 1882, to Milledgeville, Ga., and enquire about the value of 750 acres of land known as a part of the Myrick homestead, and 760 acres of land known as the Hurt Place, in Baldwin county, Ga., formerly owned by D. A. Jewell and conveyed to W., B. & Co. to secure a debt of $5,000?

5th. What did you ascertain to be — value of said land, and from whom did you obtain estimates of its value; what was the general opinion of persons you conversed with on the subject as to its value?

6th. Did you ever meet Gen'l S. P. Myrick; if so, when, where, and under what circumstances?

7th. Did you ever have any conversation with Gen'l S. P. Myrick, and what was said by him in regard to the whole or any portion of said land?

Did he ever give you any estimate as to the value of said land?

97 8th. State all you know that will benefit the complainant- or defendants as fully as if specially interrogated.

W. E. JACKSON,
HILL & HARRIS,
*Compl'ts' Sol'rs.*

We shall object to any evidence had in answer to the foregoing interrogations sought to be used on the trial of said cause, because the application for commission was not made within the time prescribed by law.

We object to the 4th direct interrogatory on the ground that the same is illegal, being suggestive of the answer, and therefore leading.

Also to the 5th, because it seeks to ascertain the opinions of others who could have testified as to the value of the land under oath, and

his estimate appears to be based on the opinions of other persons, all being illegal.

We also object to the 6th int'y, because it seeks to get says or statements of Gen'l S. P. Myrick, who was one of the defendants and has recently died, and who, although he testified before the auditor, did not have his attention drawn to the matter enquired about in such way as to get his statement on the subject or matter enquired about, and, said Myrick being now dead, the evidence of said agent is illegal. Besides, said Myrick being dead and not represented by an administrator or other person as a party; or, if so represented, his sayings or statements as enquired for would not bind such party or any of the defendants.

The same objection is made to the 7th int'y.

And we object to the interrogatories as a whole as illegal.

LANIER & ANDERSON,
*Def'ts' Sol's.*

98 *Acknowledgment of Service.*

We acknowledge service of the int'ys and consent for commission to issue, subject to the foregoing objections.

Oct. 15, 1885.

LANIER & ANDERSON,
*Def'ts' Sol's.*

Endorsement: U. S. circuit court, western division, southern district of Georgia. Woodward, Baldwin & Co. *vs.* D. A. Jewell. Int'ys for T. P. Wardlaw. Filed Oct. 15, 1885. L. M. Erwin, deputy clerk.

*Clerk's Memorandum.*

Commission was issued, executed, and returned in due form of law, and, no exception having been taken thereto, the said commission, with all formal entries appertaining to the execution and return, are here omitted as unnecessarily encumbering the record. The answers of the witnesses to said interrogatories are as follows:

*Depositions of T. P. Wardlaw.*

U. S. Circuit Court, Southern District of Georgia, Eastern Division.

WOODWARD, BALDWIN & CO.
*vs.*
D. A. JEWELL *et. al.*

Examinations and depositions of T. Perrin Wardlaw, a witness produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commission issuing out of
99 the honorable the circuit court of the United States for the southern district of Georgia, eastern division, taken and reduced to writing in the city of Augusta, State of Georgia, on this seventeenth day of October, 1885, at the office of P. J. Sullivan, Esq.

T. PERRIN WARDLAW, aged 35 years, being duly sworn, answers and deposes as follows, to wit:

To the first direct interrogatory witness, answering, saith: I reside in the city of Augusta, Georgia, and did so reside in 1882; was then and am now engaged in the cotton business.

To the second direct interrogatory witness, answering, saith: I do not know either of the parties in the above-stated case.

To the third direct interrogatory witness, answering, saith: I was employed by William E. Jackson, Jr., attorney for Woodward, Baldwin & Co., to visit Baldwin and other counties in Georgia to ascertain the value of certain real estate in which said Woodward, Baldwin & Co. were interested.

To the fourth direct interrogatory witness, answering, saith: I did visit Milledgeville in July, 1882, for the purpose stated in interrogatory fourth.

To the fifth direct interrogatory witness, answering, saith: The "Hurt Place" consisted of 760 acres, and the homestead place
100 of S. P. Myrick comprised 750 acres. The general valuation of the land in the two tracts was from six to seven dollars per acre. I received estimates of the value of said lands from the tax receiver, ordinary, clerk of the superior court of Baldwin county, and one or two other gentlemen whose names I do not now recall.

To the sixth direct interrogatory witness, answering, saith: Yes; I met Gen. Myrick in Milledgeville at the hotel during said visit in July, 1882. I sought an introduction to him, was introduced or made myself known to him for the purpose of obtaining information in regard to said land.

To the seventh direct interrogatory witness, answering, saith: I did have a conversation with him concerning said lands, and, in regard to the Hurt Place, my recollection is that he bought the Hurt Place in February, 1882, at three and $\frac{25}{100}$ dollars per acre. In regard to the homestead tract Myrick told me that he exchanged for this place twelve or thirteen hundred acres in Sumter county, Georgia, valued at five dollars an acre, within two or three years

prior to my visit. About the correctness of this last statement I am very positive.

To the eighth direct interrogatory witness, answering, saith: My answers to the foregoing seven interrogatories contain all the information I have concerning the matter.

T. PERRIN WARDLAW.

Answered, sworn to, and subscribed before us this 17th day of October, 1885, at Augusta, Georgia.

CHAS. P. PRESSLY,
P. J. SULLIVAN,
*Commissioners.*
CHAS. P. PRESSLY, *Clerk.*

101 *Deed of D. A. Jewell and Wife to Woodward, Baldwin & Co.*

STATE OF GEORGIA, }
*Hancock County.* }

This indenture, made the seventeenth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, between Daniel A. Jewell and his wife, Mary A. Jewell, of the said county and State, of the first part, and Woodward, Baldwin & Co., of the city of New York and State of New York, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of five thousand dollars, to them in hand well and truly paid by the said parties of the second part at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, release, convey, and confirm, unto the said parties of the second part, their heirs and assigns, the following tracts of land, situate, lying, and being in the county of Baldwin and State of Georgia, and which are known and described as follows, to wit:

One known as the Hurt Place, consisting of seven hundred and sixty acres, more or less, adjoining lands of Skelton Napier on the north and east, Terry Dismukes on the west, and the Myrick homestead tract on the south.

The other consisting of seven hundred and fifty acres of the homestead tract of S. P. Myrick, adjoining lands of Ward on the
102 northwest, Rains on the southwest, Cobb on the south, and on all other sides adjoining the homestead of Steth P. Myrick, together with all and singular the rights, members, and appurtenances to said lots of land in anywise appertaining or belonging; to have and to hold the said bargained premises to the said Woodward, Baldwin & Co., their heirs and assigns forever, in fee simple, and the titles to them, the said Woodward, Baldwin & Co., their heirs, executors, administrators, and assigns.

This deed — made, executed, and delivered under the acts of the Legislature of Georgia of 1871 & 1872, as found in *in* the Code of 1873, sections 1969, 1970, 1971. The said D. A. Jewell and his wife,

Mary A. Jewell, the said bargained premises unto the said Woodward, Baldwin & Co. will warrant and defend forever against the claim of themselves and their heirs and against the claim of all other persons whatsoever: Provided, nevertheless, that if the said D. A. Jewell, his heirs, executors, and administrators, shall well and truly pay or cause to be paid *the* unto the said Woodward, Baldwin & Co., their heirs and assigns, the aforementioned sum of five thousand dollars on or by the seventeenth day of January, one thousand eight hundred and eighty-one, with lawful interest on the same, and according to the tenor of the agreement, bearing even date with this instrument, between the parties to this agreement, then and from thenceforth as well this present indenture *and* the right to the property conveyed shall cease, determine, and be void to all intents and purposes.

103 In witness whereof the said Dan'l A. Jewell and his wife, Mary A. Jewell, have hereunto set their hands and affixed their seals the day and year first above written.

DANIEL A. JEWELL. [L. S.]
MARY A. JEWELL. [L. S.]

Signed and sealed in presence of—
JAS. C. SHEA.
O. JEWELL,
*Notary Public, Hancock County, Georgia.*

STATE OF GEORGIA, }
*Baldwin County.* }

CLERK'S OFFICE OF THE SUPERIOR COURT.

Recorded in Book P, pages 219 & 220.
January 31st, 1878.

WALTER PAINE, *Clerk.*

104 *Contract of Woodward, Baldwin & Co. with Jewell, Jan.* 17, 1878.

STATE OF GEORGIA, }
*Hancock County.* }

This indenture, made the seventeenth day of January, one thousand eight hundred and seventy-eight, between D. A. Jewell, of Jewell's Mills, Ga., of the first part, and Woodward, Baldwin & Co., of the city of New York and State of New York, of the second part, witnesseth:

That in consideration of the said Jewell having given to the said Woodward, Baldwin & Co. security for the sum of thirty thousand dollars—$30,000—for three years, the said Woodward, Baldwin & Co. agree to hold the security for the said term of three years and allow the said Jewell the use of the said sum of thirty thousand dollars for the said term of three years at seven per cent. per annum, and (2½) two and a half per cent. commission for each six months.

The said Woodward, Baldwin & Co. further agree to manage the goods consigned to them for sale on account of the said Jewell to

the best of their ability and skill, and, upon the payment of the said loan within the specified time, agree to return the said security to the said Jewell—

The said security being mortgage deeds to real estate in the counties of Warren, Baldwin, Twiggs, and Sumter, in the State of Georgia.

The said Woodward, Baldwin & Co. further agree that the said Jewell shall have full right and permission to sell the property named in said deeds and make titles thereto, the proceeds of sale to go to the credit of the said Woodward, Baldwin & Co.

DANIEL A. JEWELL.
WOODWARD, BALDWIN & CO.

Witness:
O. JEWELL,
*Notary Public, Hancock County, Georgia.*

105 *Audited Account.*

Mr. D. A. Jewell in % with Woodward, Baldwin & Co.

| | | | |
|---|---|---|---|
| | DR. | | |
| 1883. | | | |
| May 4 | To balance as per % rendered | | 24,882 46 |
| | " paid assignees, fees and expenses of sale of Twiggs and Sumter Co. places | | 442 |
| | | | 25,324 46 |
| | CR. | | |
| 1883. | | | |
| June 5 | By sale of lien on land in Warren Co., on which is located factory, to W. L. L. Bowen | 10,058 33 | |
| 1884. | | | |
| Janu'y 1 | " sale of Twiggs Co. place by assignees, free of lien of $12,000, to Woodward, Baldwin & Co. | 8,000 | |
| " " | " sale of Sumter Co. place by assignees, subject to lien of $3,000, to Woodward, Baldwin & Co. | 17 | |
| M'ch 20 | " sale of Sumter Co. place by Woodward, Baldwin & Co. to George W. McNeal | 3,150 | |
| | | | 21,225 33 |
| | To balance due Woodward, Baldwin & Co. | | $4,099 13 |

MARCH 20TH, 1884.

The foregoing account of Woodward, Baldwin & Co., of New York city, against Daniel A. Jewell, of Hancock county, has been examined and found correct by us. We find there is due Woodward, Baldwin & Co. by D. A. Jewell the sum of four thousand and ninety-nine $\frac{13}{100}$ dollars ($4,099.13) *dollars*, exclusive of interest on the account which they are entitled to from May 4th, 1883, there being no funds in our hands as assignees to pay said ballance.

W. H. JEWELL, *Assignee*,
D. W. DU BOSE, *Assignee*,
*Assignees of D. A. Jewell.*

106 *Deed of Mary E. Daniel to Daniel A. Jewell.*

GEORGIA, }
*Twiggs County.* }

This indenture, made this seventh day of February, in the year eighteen hundred and seventy-nine, between Mary E. Daniel, of the State and county aforesaid, of the first part, and Daniel A. Jewell, of said State and county of Hancock, of the second part, witnesseth:

That the said Mary E. Daniel, for and in consideration of the sum of three thousand dollars to her in hand paid at and before the signing and delivery of these presents, hath granted, bargained, sold, aliened, and conveyed, and by these presents does convey, unto the said Daniel A. Jewell, his heirs and assigns, all the tract or parcel of land lying and being in the county of Sumter, of said State, in the twenty-seventh and twenty-eighth districts, and known in the plan of said districts as number one hundred and five (105), one hundred and six (106), one hundred and thirty-five (135), in said twenty-seventh district; also lots numbers three hundred and sixty-three (363), three hundred and sixty-eight (368), and three hundred and sixty-nine (369), in said twenty-eighth district, and also one-half of lot one hundred and thirty-four (134) and one-fourth ($\frac{1}{4}$) of lot number one hundred and thirty-seven (137), in said twenty-seventh district, all containing thirteen hundred and sixty-seven (1,367) acres, more or less; to have and to hold the said described parcel or tract of land unto the said Daniel A. Jewell, his heirs and assigns, in full, together with all and singular the rights, members,
and appurtenances thereof to the same and in any manner
107 belonging, to his and their own proper use in fee simple.

In testimony wher-of she has hereto set her hand and seal the day and year above written.

("Sumter" being erased and rewritten and "eighth" erased before signing.)

MARY E. DANIEL. [s.]

Signed, sealed, and delivered in presence of us—
J. D. MYRICK.
WM. GRIFFIN, *J. P.*

Recorded above deed January 19th, 1881.
J. H. ALLEN, *Cl'k S. C.*

STATE OF GEORGIA, }
*Hancock County.* }

This indenture, made the eighth day of December, in the year of our Lord one thousand eight hundred and eighty, between Daniel A. Jewell, of the county of Hancock, of the one part, and Albert H. Jewell, of the county of Hancock, of the other part, witnesseth:

That the said Daniel A. Jewell, for and in consideration of the sum of thirty-four hundred and thirty-one and $\frac{29}{100}$ dollars in hand paid at and before the sealing and delivery of these presents, the re-

ceipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do- grant, bargain, sell, alien, convey, and confirm, unto said Albert H. Jewell, his heirs and assigns, all that certain tract of land situate, lying, and being in the county of Sumter and State of Georgia, lying in the twenty-seventh and twenty-eighth districts, in said county
108 and State, and known in the plan of said district- as numbers one hundred and five (105), one hundred and six (106), and one hundred and thirty-five (135), in said twenty-seventh district; also lots numbers three hundred and sixty-three (363), three hundred and sixty-eight (368), and three hundred and sixty-nine (369), in said twenty-eighth district, and also one-half of lot number one hundred and thirty-four (134) and one-fourth of lot number one hundred and thirty-seven (137), in said twenty-seventh district, all contain-g thirteen hundred and sixty-seven (1,367) acres, more or less:

To have and to hold the said bargained premises, with all and singular the rights, members, and appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of Albert H. Jewell, his heirs, executors, administrators, and assigns, in fee simple; and the said Daniel A. Jewell the said bargained premises unto the said Albert H. Jewell, his heirs, executors, administrators, and assigns, against the said Daniel A. Jewell, his heirs, executors, and administrators, and against all and every other person or persons shall and will warrant and forever defend by virtue of these presents the day and year first above written.

DANIEL A. JEWELL. [s.]

Signed, sealed, and delivered in presence of us—

JAMES C. SHEA.
ORLANDO JEWELL,
*Not'y Public & ex Off. J. P., Hancock County, Ga.*

Recorded above deed January 19th, 1881.

J. H. ALLEN, *Clerk.*

STATE OF GEORGIA,
*County of Sumter.*

CLERK'S OFFICE SUPERIOR COURT.

109 I, J. H. Allen, clerk superior court in and for said county of Sumter, do hereby certify that the above and foregoing two deeds of Mary E. Daniel to D. A. Jewell and from D. A. Jewell to Albert H. Jewell are true and correct exemplifications as taken from Record Book "T," pages 130 and 131, in my office.

Given under my official signature and seal of office this the first day of October, 1885.

[SEAL.] J. H. ALLEN, *Clerk S C.*

110 *Tax Returns.*

| Name of militia district. | Real estate, lands, including improvements thereon, mills, machinery, toll bridges, and ferries. | | Personal estate. | | | | |
|---|---|---|---|---|---|---|---|
| No. 318 district, Georgia militia. | Total number of acres of land. | Aggregate value of land. | Value of household and kitchen furniture. | Horses, mules, hogs, sheep, cattle, etc. | Plantation and mechanical tools. | Value of all other property not before enumerated. | Aggregate value of whole property. |
| *Names (given names in full).* | *Acres.* | *Dollars.* | *Dollars.* | *Dollars* | *Dollars* | *Dollars.* | *Dollars.* |
| 1879. | | | | | | | |
| Myrick, Stith P., agent Mrs. M. E. Daniel | 343 | 2,000 | ------ | ------ | ------ | ------ | 2,000 |
| 1881. | | | | | | | |
| Myrick, Mrs. E. S. | 8 | 100 | 50 | 185 | 10 | 100 | 345 |
| 1882. | | | | | | | 4,200 |
| Myrick, S. P. | 810 | 3,500 | ------ | 700 | ------ | ------ | 4,200 |
| Myrick, Mrs. E. S. | 1,130 | 6,600 | 300 | ------ | ------ | ------ | 6,900 |
| 1883. | | | | | | | |
| Myrick, S. P. | 810 | 3,500 | 300 | ------ | ------ | ------ | 4,200 |
| " " agent of Mrs. E. S. Myrick | 1,130 | 6,600 | ------ | 700 | ------ | ------ | 6,900 |
| 1884. | | | | | | | |
| Myrick, S. P. | 810 | 3,500 | 300 | ------ | ------ | ------ | 4,200 |
| " " agent of Mrs. E S. Myrick | 1,130 | 6,600 | ------ | 700 | ------ | ------ | 6,900 |

Court of Ordinary, Baldwin County.

111 I, Daniel B. Sanford, ordinary of said county, judge presiding in the court of ordinary of said county, and *ex officio* clerk thereof, do certify that the foregoing is a true and complete transcript and exemplification of the tax returns of the above-named parties as the same appears from the tax digests of Baldwin county for the years 1879, 1881, 1882, 1883, and 1884, to wit: Of S. P. Myrick, agent of Mrs. M. E. Daniel, for 1879; of Mrs. E. S. Myrick for 1881; of S. P. Myrick and Mrs. E. S. Myrick or 1882, and of S. P. Myrick and S. P. Myrick, agent of Mrs. E. S. Myrick, for 1883 and 1884. I further certify that I am the keeper of said tax digests in said ordinary's office; that my attestation hereto is in due form, and that I am duly commissioned and qualified.

Witness my hand officially and seal of office.

DANIEL B. SANFORD,

*Ordinary and ex Officio Clerk of the Court of Ordinary.*

112 *Evidence Introduced by Defendants.*

In the Fifth Circuit Court of the United States for the Western Div., Southern District of Ga.

WOODWARD, BALDWIN & CO.
*vs.*
D. A. JEWELL.

WEDNESDAY, *March* 17, 1885.

Pursuant to an order from the fifth circu-t court of the United States for the western division, southern district of Georgia, appointing the undersigned examiner in the foregoing case, W. B. Hill, of counsel for complainant-, and R. S. Lanier, of counsel for defendant, appeared before — on the 17th day of March, 1885, and the examination of witnesses was commenced.

*Testimony of D. A. Jewell.*

D. A. JEWELL sworn for defendant:

In 1870 I was engaged in manufacturing; also in farming and store-keeping. I disposed of part of the product of my mill where I could find a market, and part of it I shipped to Woodward, Baldwin & Co. They did business in New York city at that time and have done business there since. I did business with them for four or five years prior to 1870; it may not have been so long, but I did business prior to 1870 with them. The business they did with me was a commission account. I consigned to them the product of my mill and they sold it for me on commission.

(Letters exhibited to witness marked A to D, inclusive.)

These letters came to me from the house of Woodward, Baldwin & Co.

Ques. Were you, prior to April, 1872, charged by complain-
113 ants with a greater rate of interest than 7 per cent. for any advances made to you by complainants?

Objected to by complainants on the following grounds: The object of this evidence is to go into the account between complainants and defendant. The defendant Jewell has already applied to the court for the appointment of a master and the court has refused the application, holding that it was premature to investigate the question of indebtedness between the parties. It was further provided that the complainants might afterwards at a proper stage apply for the appointment of a master (not examiner). No exception was taken by the defendant to the judge's order, and it stands unrevoked. Complainants now say that this is a method of evading the effect and force of the judge's previous ruling, and such evidence is now improper to be received before the examiner and because all matters of usury now sought to be enquired into are barred by the statute of limitations.

Ans. To the best of my recollection I was not. I was first charged a greater rate of interest than seven per cent., as I now remember, in the account rendered by complainants to me April 30th, 1872.

The pencil mark "not allowed" on the statement of April 3rd, 1872, was put there by my book-keeper by my direction at the time that statement was received.

The statements from January 1st, 1870, to February 28th, 1883, inclusive, including all the monthly statements, were statements made to me by complainants, and said statements are now submitted in evidence to the examiner.

114 Question. Where were the balances shown against you by these statements to be paid?

At this point counsel for complainants ask leave to propound the following question:

Question. Was not the contract between yourself and Woodward, Baldwin & Co. either made in writing or reduced to writing after it was made?

Ans. It was.

Question (by defendant). Were there two contracts?

Ans. Yes, sir.

Question (by defendant). Where was the first contract made?

Ans. In New York city, at the office of Woodward, Baldwin & Co.

Question (by defendant). What contract do you refer to?

Ans. The contract referred to in my answer, dated July 1st, 1873, which was the first contract.

Defendants now renew the question:

Where was the contract to be performed and where these balances to be paid?

Objected to by complainants on the ground that the contract is in writing.

Ans. The contract was to be performed in New York.

Question. Where was the second contract in writing, dated 1878, to be performed?

Same objection by complainants.

Ans. It was to be performed in New York. The second contract was made in Augusta, Ga., but was signed in Hancock county, Georgia, but was to be performed in the same place as the first.

I believe that there was no final settlement ever had between Woodward, Baldwin & Co. and myself from the beginning to the end of our transactions; it was a running account.

115 The statement made by the assignees showing a balance of account of $4,099.13 and attached to the bill was not made by my knowledge or authority. I never knew anything about it until I saw it in the copy bill presented to me.

I sold the lands to Gen. Myrick referred to in the bill because I wanted to sell them. I sold him the full title, believing I had the right to sell it.

Objected to by complainant- on the ground that witness' deed to complainant- would control the matter interrogated about.

I sold those lands for all I could get for them and I believed at the time that it was the best I could get for them. If no mortgage had been on the land the price I got for it would have been the same.

Objected to by complainants.

Cross:

Woodward, Baldwin & Co. rendered monthly statements to me.

Question. If any errors occurred in those statements was not attention then called to them and were they not adjusted and agreed upon?

Objected to upon the ground that the writings will show.

Answer. They were adjusted. All of this was done by correspondence in writing.

Letters submitted to witness purporting to be signed by D. A. Jewell, from January 1st, 1878, to May 8th, 1883.

Question. Are not these your original letters?

Answer. They are.

116 Letters marked by examiner from E to E E.

There is no matter in issue between Woodward, Baldwin & Co. and myself on the accounts rendered by Woodward, Baldwin & Co. to myself except an overcharge of interest, as far as I know, and with the exception of this overcharge of interest the account is correct.

Objected to by defendant on the ground that there is no account sued on.

Question. The first contract was for one year. Is it not true that both parties continued to act under this contract until the second contract was made?

Objected to by defendant if anything was agreed about in writing.

Answer. I think we did continue to act under the terms of that contract until the second one was made, and I think we continued to act under the second contract up to the time of my suspension.

Question by defendant. Was anything that was done continuing the terms of those contracts in writing, or how?

Answer. It was done entirely by letter.

The consideration received from Gen. Myrick by me for the 1,510 acres of land was partly in cash and partly exchange of other lands.

The land that I received in exchange was in Sumter county. The Myrick homestead place and the Hurst place, deeded by me to Gen. Myrick February 1st, 1882, was, I think, sold at the same time.

The consideration of that sale was $4,000.00—part cash and the balance, which was $1,000.00, was by note, with interest.

117 Question. Did you not get a letter from Woodward, Baldwin & Co., in April, 1883, complaining that you had parted with these lands?

Objected to by defendants for want of relevancy, and that the letter will show for itself.

Answer. I got a letter from them in regard to it. I don't remember whether there was a complaint or not. I replied to it, saying that I had sold or exchanged the lands in Baldwin county.

I gave in these lands for taxes as long as I owned them. I gave them in for taxes to the deed in 1882. I do not know whether I gave them in for more than they were worth or not. I thought at the time that the land was worth more than it was sold for, but in trying to dispose of it I thought I had done the best with it I could. When I gave it in at a certain figure I thought it was worth that figure. I was in the possession of this land up to the time I sold it. It was rented part of the time and part of the time it was carried on by me through my agent. I tried to sell it from the time it came into my possession until I did sell it. I advertised it once in the New York Herald.

Question. What price did you hold it at?

Objected to by defendant-.

Answer. I think I held it for at least $6.00 an acre. I thought my factory was worth at least $60,000.00, and my recollection is that I gave it in for that for taxes, but I did not get more than one-third of that for it. It did not bring that when it was sold. It was sold under a mortgage, at public outcry. I think that the reason I could not get more for the place was because it was encumbered with

118 a mortgage in favor of Woodward, Baldwin & Co. One of the places was afterwards bought in by Woodward, Baldwin & Co. for $8,000.00 and sold by them afterwards for $10,000.00. I did not pay over the money to Woodward, Baldwin & Co. that I got from Myrick, for the reason that there was a general account between us, and what I got for these lands saved me from drawing on them for money. I never saw that land in my life. I believe that I bought the Myrick homestead at a bankrupt sale; do not remember the year.

I have known Gen. Myrick for 37 years; our personal relations have been very friendly. I did not buy the property at that sale in view of those friendly relations; I bought it with a view to self-protection. I had a claim on it. Gen. Myrick was in debt to me, and I bought it to protect myself.

Redirect:

I negotiated this sale with Gen. Myrick in person. I told Gen. Myrick that there was a mortgage on the place, but that I had the right to sell it and to give him perfect titles. I did not sell the property to him for a less sum than I would have sold it if there

had been no mortgage on it. I do not think that he bought it for a less price than he would have bought if there had been no mortgage on it. In one view he did, by reason of my being in debt and I had to sell it; but in another he did not, because if I had not been in debt I would not have sold the land.

By complainants: I do not think that the mortgage of Woodward, Baldwin & Co. depressed the sale of the land.

D. A. JEWELL.

D. A. JEWELL recalled by defendant-:

119 The amount of $25,000.00, mentioned in the first agreement, 1873, and the amount of $30,000.00, mentioned in the second agreement of 1878, represented debts then subsisting, and was not for money to be advanced.

Cross:

I did not notify Woodward, Baldwin & Co. of the sale of the land at the time, but afterwards they notified me that under certain circumstances they would not accept for me any more drafts. I replied that under the circumstances I would not draw on them again. Afterwards I shipped them what I thought was enough to cover the money that I received for the land.

I believe that I gave in my taxes in Baldwin county myself once or twice, and my sons gave it in for me at other times as my agent-. The land that I sold to Gen. Myrick was rented to Gen. Myrick all the time after I bought it until I sold it to him. I don't remember what rent I got for it.

I read over the last account current sent to me by Woodward, Baldwin & Co., which was the one of March. I think another one was afterwards rendered to the assignees. I read it over, but did not figure up the interest. I made no objections to it at the time.

D. A. JEWELL.

D. A. Jewell's name being signed by examiner, testimony being read to him and signed at his request.

EXHIBIT A.

*Letter of Woodward, Baldwin & Co. to D. A. Jewell.*

NEW YORK, *June 2nd*, 1871.

Mr. D. A. Jewell.

120 D'R SIR: If you think it likely that you will require any money ahead of shipments we can give it to you here at 7 per cent. by your draft upon us at 4 months, and sending the draft to us for acceptance you can then draw at sight for the money. We wish, if you will do so, to receive all of your shipments. We are also in the cotton market daily and can attend to your cotton.

Truly yours, WOODWARD, BALDWIN & CO.

No. 8 filling is very much wanted. What will you make us 50 bales at?

**Letter A. E. F. Best, examiner.**

EXHIBIT B.

*Letter of Woodward, Baldwin & Co. to D. A. Jewell.*

NEW YORK, *Feb'y* 27, 1871.

Mr. D. A. Jewell.

D'R SIR: Our Mr. Kennerhill will probably see you in a week or ten days. We bespeak for him your kind attention. We are constantly in Philadelphia & have goods which we control which necessitates our going among the buyers, and we think if you would confide all of your shipments North to us we could represent you in both markets and get better prices. What money you need we will supply you, and we shall be glad to hear from you upon the subject.

Yours truly, WOODWARD, BALDWIN & CO.

Letter B. E. F. Best, examiner.

121 EXHIBIT C.

*Letter from Woodward, Baldwin & Co. to D. A. Jewell.*

NEW YORK, *Feb.* 1, 1871.

Mr. D. A. Jewell.

D'R SIR: We have your favor of the 27th, received the 28th, with invoice of goods, which shall have our best attention upon arrival. We do not desire you to cover your acc't by remittance, but by shipment of goods, as was originally intended. We will not offer or sell your goods in Philadelphia, & desire to continue business with you. We presume that is the cause of complaint. We will make everything satisfactory, & shall be glad to hear from you.

Yours very truly,

WOODWARD, BALDWIN & CO.

Letter C. Examiner, E. F. Best.

EXHIBET D.

*Letter from Woodward, Baldwin & Co. to D. A. Jewell.*

NEW YORK, *April 28th,* '71.

Mr. D. A. Jewell.

D'R SIR: Your favor of 24th is to hand, with invoice. We agree with you that the policy is to sell; will send you a sketch in a few days of all of your sheetings. Your draft will be duly honored. Draw for what you need.

Yours truly, WOODWARD, BALDWIN & CO.

Letter D. E. F. Best, examiner.

122 *Testimony of W. H. Jewell.*

W. H. Jewell (sworn for defendant) and C. W. Du Bose were the assignees under the deed of assignment made by D. A. Jewell. D. A. Jewell knew nothing about the statement made by the assignees, showing a balance of $4,049.13 due Woodward, Baldwin & Co., which is attached to the bill. Mr. Jackson, counsel for the complainants, made out the account and sent it to C. W. Du Bose at Sparta. Col. Du Bose signed it and sent it to me at Jewell's, and I signed it without asking D. A. Jewell anything about it. That account was correct, so far as the assignees knew anything about it.

Mr. Du Bose signed it and sent it to me and wrote to me that if the account was correct to sign it, and if it was not to scratch his name from it.

Objected to by complainants.

C. W. Du Bose never examined the books. I never examined them with a view to making out that account.

Cross:

I examined the last statement made by Woodward, Baldwin & Co. The first item in the statement attached to the bill of $24,882.46 was taken from Woodward, Baldwin & Co.'s account current rendered to D. A. Jewell, but received by the assignees. The other items or credits in the statement I looked into, and they are correct.

W. H. JEWELL.

*Testimony of S. P. Myrick.*

S. P. MYRICK sworn for defendant:

Mr. Jewell told me that there was a mortgage on the land that I bought from him, but it had no effect at all on the amount I would have paid for it. I thought I paid full value for the land.

123 Mr. Jewell said he had full authority to sell the land.

Objected to by complainants on the ground that Woodward, Baldwin & Co.'s rights cannot be affected by proof of consideration between Jewell and Myrick, and that the deed would control.

There was a lot of land in the same neighborhood—I think almost adjoining—that sold for about the same price at about the same time. In reference to price, I did not buy with a view to paying the mortgage. I would not have bought the land at that price if I had not believed that Jewell had a full right to give me a perfect title.

Objected to by complainants.

Cross:

I think Jewell said that it was a mortgage on the land. I did not go to the records to see it. I relied on his statement about the paper. My understanding was that the proceeds were to be applied to the

payment of the debt of Woodward, Baldwin & Co., but nothing was said about it. I thought Jewell was authorized to sell the land. I did not apply for the consent of Woodward, Baldwin & Co. The consideration paid for this 1,160 acres of land was money—$3,000.00 cash and a note for $1,000.00, with interest, which was paid in about a year. These two tracts were very fair land. Part of it was old, worn-out land, except 100 acres, which was fresh good land.

The whole tract, except the 100 acres, had been cleared up, and some of it has since grown up in second growth, and some is in cultivation. Some of it has been in cultivation for fifty years.

124 The two tracts of land are fully up to the average of lands in Baldwin county. I think $25.00 would cover the value of the improvements on the Hurst Place when I bought it. There was no dwelling on the homestead tract when I bought. There was some negro houses. I suppose $50.00 would cover the value of improvements on that place.

I have been a resident of Baldwin county for seventy years up to last Saturday week. I am familiar with the lands in that portion of the county. Land was higher in 1882 than it was in 1878, but land was selling cheap in 1882. I think I gave in that land at $3.50 per acre for taxes. I have been for a long time on very friendly and intimate terms with Mr. Jewell. No exchange of lands was part of the consideration of the deed to these lands.

S. P. MYRICK.

W. H. JEWELL recalled by complainant-:

At the time of the assignment of D. A. Jewell I was his book-keeper. As his book-keeper I was familiar with the accounts of D. A. Jewell with Woodward, Baldwin & Co. I never figured out the interest on those accounts. I only took the statements of Woodward, Baldwin & Co. for the interest. The statement that I received from Jackson compared with the statement that I received from Woodward, Baldwin & Co. sent to D. A. Jewell, and which — by D. A. Jewell received.

I do not know that D. A. Jewell looked at the last statement received from Woodward, Baldwin & Co.

W. H. JEWELL.

125 S. P. MYRICK recalled by complainant-:

The land that I bought of Jewell adjoins the land of the Myrick homestead residence. It is twelve miles from where I live. There is a dwelling on the Myrick homestead place, built in 18—. It is an old-fashioned two-story building. The land I bought from Jewell adjoins that place, but it is no part of the Myrick homestead place.

S. P. MYRICK.

E. T. BEST, *Examiner*.

Endorsement: United States circuit court, west'n div., so. district of Ga. Woodward, Baldwin & Co. *vs.* D. A. Jewell. Testimony. Filed in office this 1st day of April, 1885. L. M. Erwin, dep. clerk.

126 *Contract of D. A. Jewell with Woodward, Baldwin & Co., July 1st, 1873.*

In consideration of the sum of twenty-five thousand ($25,000.00) dollars advanced to me by Woodward, Baldwin & Co., of New York, I, D. A. Jewell, of Mayfield, Georgia, hereby make the following agreement with them, viz: I agree to pay them four per cent. (4%) commission every six months for said sum and interest at the rate of seven per cent. (7%) per annum and one-quarter per ct. (¼%) brokerage on all amounts advanced by them in cash or acceptances; and, in order to enable Woodward, Baldwin & Co. to carry the above-named amount, I agree to furnish them from time to time, as they may desire, my notes or my drafts upon them, which they are to discount at the rate of seven per ct. (7%) per annum and one-quarter per ct. (¼%) brokerage.

I agree to consign and ship to Woodward, Baldwin & Co. for sale on commission three-fourths (¾) of all the goods I may manufacture, the charges on which shall be five per ct. (5%) commission and guarantee and one per ct. (1%) for fire insurance, storage, and labor.

I also agree to ship them all the cotton I may have to sell in the New York market; and I further agree not to mortgage any of my property without the consent of said Woodward, Baldwin & Co.; and I bind myself not to overdraw my account with Woodward, Baldwin & Co. beyond the sum first named in this agreement, viz., twenty-five thousand dollars.

This agreement to continue in force one year from date, viz., from July 1st, 1873, until July 1st, 1874.

D. A. JEWELL.

127 *Deed of D. A. Jewell to Stith P. Myrick, February 1st, 1882.*

STATE OF GEORGIA, }
*Hancock County.* }

This indenture, made this the first day of February, in the year of our Lord one thousand eight hundred and eighty-two, between Daniel A. Jewell, of the county — Hancock and State of Georgia, of the one part, and Stith P. Myrick, of the county of Baldwin and State of Georgia, of the other part, witnesseth:

That the said Daniel A. Jewell, for and in consideration of the sum of ($4,039.00) four thousand and thirty-nine dollars, three thousand of which is to me in hand paid and note given, bearing even date with this instrument, payable one day after date to the order of D. A. Jewell & signed by Stith P. Myrick, for one thousand and thirty-nine (1,039) dollars, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed, and confirmed, & by these presents *do* grant, bargain, sell, alien, convey, and confirm, unto the said Stith P. Myrick, his heirs and assigns, all that tract or parcel of land situate and lying in the county of

Baldwin, known as the "Hurt Place," consisting of seven hundred and sixty (760) acres, more or less, adjoining lands of Skelton Napier, Terry Dismukes, and the Myrick homestead tract, and seven hundred and fifty (750) acres of the homestead tract, adjoining lands of Ward, Cobb, and the homestead of said Myrick, less three hundred and fifty-six (356) acres, more or less, deeded to Mrs. Elizabeth Daniel, said tracts of land now containing eleven hundred and fifty-four (1,154) acres, more or less, and formerly owned
128 by said Stith P. Myrick, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

DANIEL A. JEWELL. [L. S.]

Signed, sealed, and delivered in presence of—
JAS. C. SHEA.
WM. H. JEWELL,
*Not'y Public, Hancock County, Georgia.*

Recorded May 16th, 1883.

WALTER PAINE, *Clerk.*

GEORGIA, }
*Baldwin County.* }

CLERK'S OFFICE SUPERIOR COURT OF SAID COUNTY.

I, Walter Paine, clerk sup'r court in and for said county, do hereby certify that the above and foregoing deed is a true and exact copy from the records in my office of the deed from D. A. Jewell to S. P. Myrick, made the 1st day of Febr'y, 1882, and recorded by me May 16th, 1883, in Book "R" of Deeds, folio 31.

[SEAL.] Witness my hand and seal of office this 8th day of March, 1884.

WALTER PAINE, *Clerk.*

129 *Deed of D. A. Jewell to Mary E. Daniel, February 8th,* 1879.

GEORGIA, }
*Hancock County.* }

This indenture, made the eighth day of February, in the year of our Lord one thousand eight hundred and seventy-nine, between Daniel A. Jewell, of said county and State, of the first part, and Mary E. Daniel, of the county of Twiggs and said State, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand dollars to him in hand paid by the said party of the second part at and before the sealing and delivery of

these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, release, convey, and confirm, unto the said party of the second part, her heirs, executors, and assigns, the following-described parcels or tracts of land, situate — lying in the county of Baldwin, in said state, to wit, two hundred and sixty acres, more or less, of land, known as the Rains tract of land, adjoining lands known as the Cobb lands on the south and west and on the north by lands of Mrs. Martha Ward, on the east by lands of Stith P. Myrick and Potato creek, being the line of the last-mentioned line as the creek now runs; also ninety-three acres of land, more or less, known as the May tract of land, in the fork of the two Potato creeks, and adjoining lands of Mrs. Martha Ward on the west, of S. P. Myrick on the east, known as his homestead tract of land, and on the north — lands of D.
130 A. Jewell, known as the Hurt lands, together with all and singular the rights, members, and appurtenances thereof to the same and in any manner belonging; to have and to hold the said parcels or tracts of lands and every part thereof in full unto the said Mary E. Daniel, her heirs and assigns, to her and their own proper use in fee simple.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

DANIEL A. JEWELL. [L. S.]

Signed, sealed, and delivered in presence of us—
WM. WALKER.
ORLANDO JEWELL,
*Not. Pub., Hancock Co., Ga.*

GEORGIA, }
*Baldwin County.* }

Recorded in the clerk's office of the superior court this the 1st day of February, 1884, in Book R of Deeds, page 189.

WALTER PAINE, *Clerk.*

131 *Deed of Myrick K. Daniel to Eliza P. Jones, Dec. 19th, 1881.*

GEORGIA, }
*Wilkinson County.* }

This indenture, made the nineteenth day of December, in the year of our Lord eighteen hundred and eighty-one, between Myrick K. Daniel, of the county of Baldwin, of the first part, and Eliza P. Jones, of the county of Wilkinson and said State, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one hundred and seventy-five dollars to him in hand paid by the party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, conveyed, and con-

firmed, and by these presents doth grant, bargain, sell, release, convey, and confirm, unto the said party of the second part, her heirs, executors, and assigns, the following-described property, to wit: All of his interest in the estate of his mother, Mrs. Mary E. Daniel, late of said county, deceased, said property consisting of one parcel of land situate and lying in the county of Baldwin, in said State, containing two hundred and sixty acres, more or less, and known as the Raines Place, adjoining lands known as the Cobb lands on the south and west, and on the north by the lands of Mrs. Martha Ward, on the east by lands of Stith P. Myrick and Potato creek, being the line of the last-mentioned line as the creek now runs; also ninety-three acres, more or less, known as the May Place, in the fork of the two Potato creeks, adjoining lands of Mrs. Martha Ward on
132 the west, of Stith P. Myrick on the east, known as his homestead tract of land, and on the north by lands of D. A. Jewell, known as the Hurt tract, together with all and singular the rights, members, and appurtenances thereof to the same and in any manner belonging; to have and to hold the said parcels or tracts of land and every part thereof, in full, unto the said Eliza P. Jones, her heirs and assigns, to her and their own proper use, in fee simple.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

MYRICK K. DANIEL. [L. S.]

In presence of—
C. E. FRASUER,
S. I. DENARD, *J. P.*

Copy deed from M. K. Daniel to Mrs. Eliza P. Jones.

133 *Deed of Seth P. Myrick to Elizabeth S. Myrick, February 13th,* 1882.

STATE OF GEORGIA, }
*Baldwin County.* }

This indenture, made this the thirteenth day of February, in the year of our Lord one thousand eight hundred and eighty-two (1882), between Seth P. Myrick, of the county of Baldwin and State of Georgia, of the first part, and Elizabeth S. Myrick, of the county of Baldwin and State of Georgia, of the second part, witnesseth:

That the said Steth P. Myrick, of the first part, for and in consideration of the sum of four thousand dollars to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said Elizabeth S. Myrick, her heirs and assigns, all that tract or parcel of land, situate, lying, and being in Baldwin county, containing eleven hundred and twenty (1,120) acres, more or less, adjoining lands of S. Napier, T. Dismukes, and others, known as the Hurst and Styles land, on Potato and Cedar creeks:

To have and to hold said tracts or parcels of land unto her, the

said Elizabeth S. Myrick, her heirs and assigns, together with all and singular the rights, members, reversions, rents, profits, and appurtenances thereof to the same in any manner belonging, to her and their own proper use, benefit, and behoof forever, in fee simple.

And the said Stith P. Myrick, for his heirs, executors, ad-
134 ministrators, and assigns, the said bargained premises unto the said Elizabeth S. Myrick, her heirs, executors, administrators, and assigns, will warrant and forever defend the right and the title thereof against themselves and against the claim of all and every other person or persons whomsoever.

In witness whereof the said Steth P. Myrick hath hereunto set his hand and seal this the day and year first written.

S. P. MYRICK. [L. S.]

Signed, sealed, and delivered in presence of—
T. T. WINDSON.
E. C. RAMSAY, *J. B. C. C.*

Recorded May 16th, 1883.

WALTER PAINE, *Clerk.*

GEORGIA, }
*Baldwin County.* }

CLERK'S OFFICE, SUPER. COURT.

I, Walter Paine, clerk of the superior court in and for said county, do hereby certify that the above and foregoing is a true and exact copy of the deed from Stith P. Myrick to Mrs. Elizabeth S. Myrick, as appears of record in my office, on Book "R" of Deeds, page 32.

Witness my hand and seal of office this April 4, 1885.

[SEAL.] WALTER PAINE, *Clerk.*

135 *Supplemental Testimony of Witnesses for Complainants before Examiner.*

In the Fifth Circuit Court United States, Western Division, Southern District of Georgia.

WOODWARD, BALDWIN & CO. }
*vs.* }
D. A. JEWELL. }

Supplemental testimony taken before me in the above case by agreement of counsel under the original order in said case.

FRIDAY, *April 10th*, 1885.

Present: Jackson, for complainant-, and R. S. Lanier, for defendant.

D. A. JEWELL recalled by complainant-:

Question. In your first examination you testified that part of the consideration of the land sold to Gen. Myrick was land that he

gave you situated in Sumter county. Gen. Myrick testified that the whole consideration was cash. Can you explain that?

Answer. I don't know that I can explain it any more than I did then.

Question. You also in your first examination stated this: "I did not notify Woodward, Baldwin & Co. of the sale of the land at the time, but they afterwards notified me that, under the circumstances, they would not accept for me any more drafts. I replied that under the circumstances that I would not draw on them again. Afterwards I shipped them what I thought was enough to cover the money that I received for the land."

Answer. I cannot tell unless I had the letter before me. Those circumstances were contained in a letter that I received
136 from Woodward, Baldwin & Co. I think that it was dated about the last of March or the first of April, 1883. It was a short time before my failure—maybe three or four weeks, perhaps not so long. I think that I can find that letter of Woodward, Baldwin & Co.

Complainants now move to strike out that portion of the testimony as to the contents of the letter testified to.

I conveyed a portion of my lands to Mrs. M. E. Daniel; she is a daughter of Gen. Myrick. I cannot say that I ever knew of her owning any other property in Baldwin county at that time or since. I don't remember what I returned the land for taxes that I sold to Gen. Myrick.

By DEFENDANT: The amount of $30,000.00 mentioned in the instrument of January, 1878, was an assumed amount and did not represent a true amount.

Objected to by complainants.

My recollection is that the amount that I owed at that time was less than $30,000.00, but if I did not owe them that amount I soon drew for enough to make it that. I think the understanding was that at any time afterwards I was to draw for enough to make the amount of my debt $30,000.00. No part of the $30,000.00 was advanced at the time of the agreement of January, 1878, but what I owed on that account had been drawn for before.

My recollection is that at the time of the agreement of January, 1878, I owed Woodward, Baldwin & Co. within two to four thousand dollars of the $30,000.00. In a few days I obtained money enough to make my account with them $30,000.00 in accordance with the agreement.

D. A. JEWELL.

137 B. T. BETHUNE, for complainants:

I am a resident of Baldwin county. I know of the location of the land described in the deed from Jewell and wife to Woodward, Baldwin & Co., January 17th, 1878. I am a farmer. I live in about 6 or 7 miles of these places. I think that in 1879 the value of that land was from about three and a half to four dollars per acre. I

don't think that in February, 1882, there was any material change in its value.

Cross:

Disinterested men frequently differ in their estimate of the value of land.

B. T. BETHUNE.

I. T. MILLER, for complainant-:

I reside in Baldwin county. I am a farmer. I know of the location of the lands from Jewell and wife to Woodward, Baldwin & Co., Jan. 17th, 1878. In 1882, about the first of the year, I should think, those lands would be worth about $4.50 to $5.00 an acre. If sold on liberal time they would be worth about $6.00 an acre.

Cross:

I have only known these lands five or six years. I have been on the land a great deal in five or six years. I formerly lived in Tennessee. I have lived in Baldwin county about 11 years. I have known lands to sell in Baldwin county for those prices and in that locality. I paid that much myself for land in Baldwin county. I bought mine about four years ago and paid $6.50 per acre. I bought on a credit of three annual payments. I bought from my father.

By COMPLAINANTS: I think that my land is of the same quality as the land of Gen. Myrick's that he bought of Jewell. There are 460 acres of land in my tract.

J. T. MILLER.

138 S. P. MYRICK recalled by complainant-:

Since my purchase I have conveyed the eleven hundred and thirty acres of land to my wife that I bought of D. A. Jewell. She is now in possession of it. Mrs. M. E. Daniel is my daughter. My wife does not own any other 1,130 acres of land in Baldwin county. In this is also included her ten acres of land at Midway. I suppose the ten acres at Midway would be worth $30.00 or $40.00 an acre. The land that I bought from Jewell and the Midway land was given together. I gave in the land that I bought from *that I bought from* Jewell at $3.50 per acre. The whole is given in for $6,600.00.

Mrs. Daniel did not own any other land in Baldwin county except what she bought from Jewell. The land appearing in the digest as her land is the land she bought from Jewell. It includes the Midway ten acres and the three hundred and forty acres that she bought of Jewell. The land that Jewell conveyed to Woodward, Baldwin & Co. was purchased in 1874 by Jewell at a bankrupt sale of my effects.

Objected to by defendant because the deed is the best evidence of the time of sale and price paid.

At the time of Jewell's purchase the land was covered with judgments and executions against me that Jewell had to take up.

Objected to by complainant-.

The land was sold by the assignee to the highest bidder.

By COMPLAINANTS: I didn't know the amount of the executions against me then, but it would amount to more than
139 $10,000.00—perhaps double.

S. P. MYRICK.

WALTER PAINE sworn for complainants:

I reside in Baldwin county. I am a clerk of the superior court. I am acquainted with the land known as the Myrick homestead place. I have had occasion to go over a good deal of land in Baldwin county, having been connected with a land loan company since 1882. In my opinion the value of these lands in January, 1882, was $5.00 an acre. The company that I represent made a loan on a place near there that we valued at a good deal more. I know from records that I have made of lands what they sold for in 1880. One tract sold for $5.50 an acre; it was part of the Cobb Place.

Cross:

I think Mr. Jewell in 1879 lived in Hancock county. He has not lived in Baldwin county for the last ten years. I think that large bodies of land such as 1,100 acres would average less per acre than small bodies.

There is two hundred and two and a half acres in the Cobb Place that T. J. Barksdale bought, for which he paid $1,550.00 or $1,560.00. A good deal of it is wood and a good deal of it is cleared.

WALTER PAINE.

S. P. MYRICK recalled by defendant:

In selling large bodies of land it makes a good deal of difference from selling small bodies of land. Large bodies of land sell for much less per acre. My brother sold 260 acres of land to Napier for $4.00 an acre about the same time I bought this land
140 from Jewell. It was on Cedar creek, and as good land as there is in Baldwin county.

Objected to by complainant-.

The lot of land that Mr. Paine referred to as being bought by Barksdale I looked upon as the best lot in Baldwin county. I have known it from my childhood. Since Barksdale bought it he has cleared it and has made good crops on it.

The Cobb Place was offered to me a year before I bought the lands from Jewell at $3.00 an acre, or less if I would buy the whole place. It included this lot that Barksdale bought. The whole of it is better than the land I bought of Jewell.

By COMPLAINANT-: The Cobb land that I spoke of as being offered to me for $3.00 an acre was the whole place, containing about 3,000 acres of land, which includes the lot that Barksdale bought, and which was sold separate.

I have no recollection of meeting a Mr. Wardlaw, of Augusta, in the balcony of the hotel in Milledgeville about the first of July, 1882. I might have met such a person, but I have no recollection of it. I

do not recollect having a conversation at that time and place with a Mr. Wardlaw, in which I said that I had bought some of this land in dispute from Jewell two or three years prior thereto, and that I gave in exchange for it some lands in Sumter county, Georgia. There was this transaction with Jewell: I exchanged the land belonging to my daughter in Sumter county with Jewell for the Midway prop-
141 erty and the 340 or 360 acres of land in Baldwin county, which was not a part of the 1,100 acres that I bought of Jewell, but I do not recollect telling that to a Mr. Wardlaw. The property I exchanged for the Sumter land is part of the land embraced in the mortgage of Jewell to Woodward, Baldwin & Co.

S. P. MYRICK.

The foregoing testimony was read over to witnesses when originally written out and read to them, and their names were signed thereto by me at their request and by consent of counsel.

E. F. BEST, *Examiner.*

142 LETTERS EXHIBITS TO TESTIMONY.

JEWELL'S P. O., HANCOCK CO., GA., *Jan.* 1*st*, 1878.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I want you to do me the favor to honor my 60 — d'ft of this date, $3,000.00, and my st. d'ft for $509.24, and much oblige. Will cover the small d'ft in 4 or 5 days and the other before due. Your favors have been duly rec'd and noted. I shall be with you by the 15th and bring the deeds for your security with me. I am confident I have made no money this year, but I have worked hard and now have my business in a shape that wet and dry weather will not interfere with me, and I know I can make money with the factory when others can. I think my ac. will show some profit on the man'f's' business, but the planting interest has not been successful. We made a short crop of cotton, and the low prices leave no profit. I hope to do better this year, and as I shall have no heavy expenses as I did last year I hope to begin to reduce indebtedness. I am going to do that in every way that I can without sacrificing property and get out of all business but man'f'r., if possible.

I wish you a happy and prosperous New Year.

Yours truly, D. A. JEWELL.

Letter E E. E. F. Best, examiner.

143 JEWELL'S P. O., HANCOCK CO., GA., *Jan.* 17*th*, 1878.

Messrs. Woodward, Baldwin & Co.

GENTLEMEN: Enclosed I hand invoice — wool goods stored here and subject to your order in accordance with understanding with your Mr. Smith, the understanding being that I may dispose of the goods and proceeds to go to your cr.

Yours truly, D. A. JEWELL.

P. S.—Please honor my d'ft on you in favor of Hunt, Rankin & Lamar for $602.21 and oblige,

D. A. G.

Letter D D. E. F. Best, examiner.

JEWELL'S P. O., HANCOCK CO., GA., *Jan. 28th*, 1878.

M'rs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 18th inst., with ac. of sales, &c., came duly to hand. In reply to your question why I did not ship the kerseys from here to Atlanta will say I think I can sell all the kerseys here, nearer home than Atlanta, and the cost of shipping from N. Y. there is not much more than from here. I want you to let the cotton in enclosed invoice remain here, invoice to be returned when covered by shipments of goods. Can you not close out the goods on hand soon? I am afraid if not sold soon you will have to carry them until fall, and I want them kept sold up as close
144 as possible to save interest. I had an enquiry from your city a few days since for 50 bales sheeting and referred the party to you.

The am't due you on ac. current is larger than I calculated for but have patience for a few weeks with me and I think I can get it in and keep it inside the bounds. Do not sell the kerseys at less than 12½ net. I think they can all be sold in the next 30 days.

Yours truly, D. A. JEWELL.

Letter C C. E. F. Best, examiner.

JEWELL'S P. O., HANCOCK CO., GA., *Feb. 27th*, 1878.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favors of 23rd inst. are at hand, and yours of the 21st was duly received. I did not reply to the first, as I thought you would receive advices, &c., and find all right. Did you receive invoice of 10 bales shipped on 13th inst. and an invoice of 12 bales shipped on 16th inst.; and, if so, was not the advice of d'fts accompanying? I think it was. I believe I am acting in accordance with our agreement, and hope you have found that the letters referred to were unnecessary.

Yours truly, D. A. JEWELL.

Letter B B. E. F. Best, examiner.

145 JEWELL'S P. O., HANCOCK CO., GA., *Dec. 17th*, 1878.

M'rs. Woodward, Baldwin & Co., New York.

GENTLEMAN: Your favor of 11th came to hand last eve., and contents noted. I regret that I have not been able to come fully up to my agreement with you in every respect, but the failure has not been for want of effort on my part, but from circumstances I could not foresee or prevent. In consequence of the drought we have made a short crop, and the low prices for it make receipts from that source small. The factory busines has been curtailed by sickness

among the hands, so that I could not do more than half work for four months, and now prices of goods are 15% below what they were last year, and that makes the value of goods in your hands insufficient to make my agreement good with you. In your censure of me I hope you will take the circumstances into consideration. I desire to try another year, and want your favor; but if you insist upon your demands being complied with immediately, I think I shall have to give up. Can you not give me any encouragement? I know I can make money under average circumstances, and I hope the difficulties I have had to encounter this year may not have to be met again next year. In view of the fact that I am paying you high interest and money is now very cheap, can you not remit the 2½% to be charged on 1st Jan.?

Yours truly, D. A. JEWELL.

Letter A A. E. F. Best, examiner.

146 JEWELL'S P. O., HANCOCK CO., GA., *April 19th*, 1880.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 13th inst., with ac. sales, &c., is at hand and the ac. is correct. I have the cotton and kerseys still subject to your order. I wish you to let me use the cotton and send the goods, as I use it in its place. The kerseys I wish to hold here until the fall demand for them, and remit to you when sold. The health of our place is now good and I hope will continue so through the summer. I shall leave home to go after my daughter in Fla. tomorrow and expect to be back on 28th inst.

Yours truly, D. A. JEWELL.

Letter Z. E. F. Best, examiner.

JEWELL'S P. O., HANCOCK CO., GA., *Sept. 22nd*, 1880.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 18th inst. is at hand, and your order for 10 B. ⅞ to go to St. Louis shall have attention. In regard to my account will say I regret that I am unable to put it within limits at once, but I hope I shall be able to during the fall, and hope you will have patience with me. Your report of prices is discouraging, but I hope you will be able to do better than you indicate. I hope you will be able to get better prices in a short time.

147 The weather is now favorable for cotton-picking and the crop is being rapidly gathered. I do not think this year's crop will exceed the crop of last year.

Yours truly, D. A. JEWELL.

Letter Y. E. F. Best, examiner.

JEWELL'S, GA., *Nov. 16th*, 1880.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favors of 8th and 10th inst. are at hand and noted. I enclose you mem. of the wool and cotton kerseys sold

here. I will try to send goods ¼ & ⅛ to replace them. You ask me what I am going to do when our agreement expires. I can do nothing without your consent, though I would like to try again in hope to do better the next three years than I have in the past. If I had not have had to contend with sickness the situation would be different with me from what it now is. I do not think we shall have the trouble with sickness in the future that we have in the past, as it has been better in that respect this year than the three years before. The cause of the sickness is said to be the raising of the pond and the decay of dead timber in consequence. The timber is now nearly all down, and if that was the cause it is nearly removed and will be quite so in a short time. I want to try again. What do you say to it?

Yours truly, D. A. JEWELL.

Letter X. E. F. Best, examiner.

148 JEWELL'S, HANCOCK CO., GA., *Dec.* 22*nd*, 1880.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice of 10 B. goods, which go forward this day. I have drawn on you for $500.00, which please honor and oblige. Your ac. sales is at hand and correct.

I want you to help me to go on another year. I beleive we are over the scourge of sickness which we have been under for the past three or four years, and I think we can do better now.

Yours truly, D. A. JEWELL.

Letter W. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *Feb.* 18*th*, 1881.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favors of 12th inst. are at — and found correct; will ship the 3 B. ⅛ to W. R. Moore & Co. 1st of next week. Please honor my d'ft on you in favor of J. C. Simmons for $148.85.

Yours truly, D. A. JEWELL.

19TH.

P. S.—The three B. for W. R. M. & Co. will go to-day.

D. A. J.

Letter V. E. F. Best, examiner.

149 JEWELL'S, HANCOCK CO., GA., *May* 19*th*, 1881.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice 8 bales goods, and have drawn on you in favor L. T. Taliafarro, cashier, for $350.00, which please honor and oblige. Your favor 14th inst. with ac. sales & ac. current are at hand & found correct. I am sorry to note from your sketch continuous decline in goods.

Yours truly, D. A. JEWELL.

Letter U. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *Aug't 2nd*, 1881.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 30th ult. is at hand and carefully noted. If you will have patience with me and help me for the next six or eight weeks I think I can reduce the ac. to the limit, and I beleive that Providence will permit me to work out of my difficulties. Do not think I am trifling with you; beleive that I am doing the best I can, and with your help will yet succeed.

Before receiving your letter I had made a d'ft on you, payable to my order, for $529.53, which I much desire you to honor. I do not wish to change the ac. even if I could pay you in full to-day. I want to go and see you and have a talk with you and try to make some arrangement that will enable me to improve my goods and make my business profitable. I have contended with difficulties in the past few years that have been almost insurmountable (and probably would have been but for your help), but I think they are over now, and I know I can manage to prosper with a fair chance. If I should go to New York about the 17th inst. will I be sure to find you at home?

Yours truly, D. A. JEWELL.

Will send invoice to-morrow.

D. A. J.

Letter T. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *Feb. 17th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 13th inst. is at hand and noted. I shipped on 16th inst. 3 bls. goods to G. F. Davis & Co., as p'r enclosed way-bill; will send invoice with next goods shipped. In regard to my account with you I can only say that I am doing all I can to reduce it to the limit, and hope you will have patience. If I can sell the goods here to better advantage than to ship them to you I think I ought to do so, and think you ought not to object. I want to work out, and beleive I can do so if permitted.

Yours truly, D. A. JEWELL.

Letter S. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *April 19th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Enclosed I hand you invoice 12 bl. goods, and have drawn on you for $500 in favor of L. T. Taliafarro, cash'r, which please honor and oblige. Your favors of 12th and 15th inst. are at hand and noted. I cannot get along on 30 or $40.00 p'r bale advance. I will try and get along with an advance of $50.00 p'r bale, and hope you will grant that until I can make a more satisfactory arrangement for you, which I hope to do.

Yours truly, D. A. JEWELL.

JEWELL'S, HANCOCK CO., GA., *April 8th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice 12 bales goods, and have drawn on you in favor of L. T. Taliafarro, cash., for $500.00; in favor of C. Guilbert, cash., for 59.02, which please honor and oblige.

Your favor of 4th inst. is at hand and noted. I do not think I can make the arrangement here, but I will try and make it with my friends in Conn.; will write you again on the subject in a few days.

Yours truly, D. A. JEWELL.

152 JEWELL'S, GA., *March 28th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 23rd inst. is at hand and noted. The 45 bl. cotton are not now held, as you wrote me that when the ac. was reduced to limit of 30,000.00 you would release them, and you did not include them in your last statement of your stock in hand, so I thought you considered them released. The 4 bl. kerseys are held subject to your order, as advised. I hope you will not refuse to pay the d'ft of 25th inst. for 600.00. You know my condition, and you know $30.00 p'r bale will not pay for cotton to make them. If I can have time I think I can work out, but if I cannot I must give up. I have thought that, notwithstanding your (at times) harsh letters, you would stand by me, and as the note sent you is a regular legitimate business paper I thought you would give me cr. for it. The d'ft you refused payment of was a d'ft to pay for cotton, and stops my cr. in that way.

Yours truly, D. A. JEWELL.

Letter R. E. F. Best, examiner.

153 [In pencil:] We did not reply to this. W., B. & Co.

JEWELL'S, GA., *Aug. 2nd*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favors of 29th inst. are at hand and noted. The lands deeded to Gen'l Myrick are lands adjoining his homestead, and I exchanged them with him (in part) for lands adjoining the Sumter Co. lands, which belonged to his daughter, Mrs. Daniel, and the other part I sold to him, and he made a payment on it last Feb. of $3,000.00, and gave a mortgage note for $1,035.00, due one day after date, which he said he could pay this fall. The lands I got from Mrs. Daniel I sold for $3,431.29 to my nephew, A. H. Jewell, who was in my employment a number of years and left me to go back to Illinois. The Twiggs Co. lands might not bring more than $3.00 p'r acre if forced to sale now, but I know the place, and if I were able to hold it would not sell it for less than $15,000.00. I cannot reduce my ac. now, and I ask you to have patience with me for a few months longer, and I will try again to make arrangements to relieve you.

Yours truly, D. A. JEWELL.

JEWELL'S, HANCOCK CO., GA., *June 3rd*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice of 10 bl. goods, and have drawn on you in favor of W. W. Wrigley, cash'r, for $1,200.00, which please honor and oblige. I arrived home on last Wednesday and find all well and crops doing well. I ask you to advance $50.00 per bale on goods shipped for the next three mos. and hold them at 7 & 6c. Will you favor me?

Yours truly, D. A. JEWELL.

154 JEWELL'S, HANCOCK CO., GA., *July 20th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice 8 bl. goods, and have drawn on you in favor of L. T. Taliafarro, cash'r, for $300.00, which please honor and oblige. Your favor of 14th inst., with ac. current, was duly rec'd and correct.

Yours truly, D. A. JEWELL.

Letter Q. E. F. Best, examiner.

JEWELL'S HANCOCK CO., GA., *July 26th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 22nd inst. is at hand and noted. Gen. Myrick's statement is correct in regard to the Hurst Place and the Myrick homestead. The Twiggs Place rents for $1,500.00 per year, and I think it well worth $15,000.00, and beleive it will bring that price in a short time. I am not in a situation now to comply with your request, but I hope before the 1st of Jan. to be able to do that and more for you. We have now good prospect for crops, which, if realized, will enable us to make collections of debts carried over from past years.

Yours truly, D. A. JEWELL.

Letter P. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *Sep. 4th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice 20 bl. goods, and have drawn on you in favor W. W. Wrigley, cash'r, for $800.00, which please honor and oblige. Yours of 24th and 29th inst. are at hand. I find that we have ship'd you 2 bl. $\frac{4}{4}$, mark #304. Please mark (as you suggest) one bl. 304$\frac{1}{2}$. I cannot get along with advance of $40.00 p'r bale. If you will advance me $50.00 p'r bale I think I can get along and steadily reduce my ac. with you. Can you not do so?

Yours truly, D. A. JEWELL.

Letter O. E. F. Best, examiner.

155 JEWELL'S, HANCOCK CO., GA., *Oct. 17th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice 8 bl. goods, and have drawn on you

in favor Bowen, Jewell & Cason for $284.22 and for 27.36, which please honor and oblige.

Your favor of 13th inst., with ac. of sales, is correct, except that in item Sept. 18th you put down 5 bl. $\frac{7}{8}$ @ 6,600 yds. in place of 5,500 yds.

Yours truly, D. A. JEWELL.

Letter N. E. F. Best, examiner.

JEWELL'S MILLS, JEWELL'S, GA., ——, 187–.

Consigned to Mess. Woodward, Baldwin & Co., for sale for account of D. A. Jewell, 20 bales goods, as below; invoice No. 20.

12 bl. $\frac{4}{4}$ sheetings, #331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 1,100 yds.

8 bl. $\frac{7}{8}$ shirtings, #250, 251, 252, 253, 254, 255, 256, 257, 1,100 yds. each.

JEWELL'S, GA., *Oct. 6th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Yours of 3rd inst. rec'd, and above I hand you duplicate invoice 20. Please return the original. The bales are all 1,100 yds. each. I don't see how we could make that mistake.

Yours truly, D. A. JEWELL.

Letter M. E. F. Best, examiner.

156 JEWELL'S, HANCOCK CO., GA., *Nov. 7th*, 1882.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I have drawn on you in favor of Bowen, Jewell & Cason for $120.27, which please honor and oblige. Your favors of the 1st and 4th inst. are at hand and noted; will ship 8 bales in next—invoice to cover as you request—and try to make an arrangement to relieve you of the overadvance. Please give me the best terms you will make with me. Have you examined any of my goods sent you since 1st of Sept.? Would like to have you do so if you have not.

Yours truly, D. A. JEWELL.

Letter L. E. F. Best, examiner.

JEWELL'S, GA., *Feb. 6th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I am in receipt of yours of 1st inst. and note contents. I hope you will honor the d'ft advised this morning, as it was given to pay for cotton. I should like to work on and try to work out, and if I could have the use of money at 7 % I could do it, I believe, and I ask you to let me try still farther. I have tried to make arrangements to relieve you, but it is impossible, as you hold the mortgages, and other parties—if you have not the confidence in me to sustain me after doing business with me so long—that they cannot have it. My sons and son-in-law are willing to do

anything they can to aid me in the business, and if we can
157 be sustained I think we can still pay out. If you will continue your support I desire to continue my efforts to succeed, but if you will not I must give up. My indebtedness on the 1st Jan. was near $103,000.00 and my assets $202,400.00, of which $145,000.00 is nearly or quite worthless.

Yours truly, D. A. JEWELL.

Letter K. E. F. Best, examiner.

JEWELL'S, GA., *Feb. 14th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favors of 8th and 9th came to hand last eve, and I note contents. The ac. sales, &c., is correct. I will act in accordance with your suggestion and write to the parties, but I do not think it probable that I can make the arrangement with them, for I am under the impression that they have had some unpleasant experience with the Atlanta factory. If I cannot make any arrangement with them, if you will stand by me and let me have the use of $30,000.00 for three years longer at 7 % I (together with my sons) will put in all the energy and ability that we have to be successful, and I yet have faith to believe (" though hope deferred maketh the heart sick ") that we can succeed. My sons and sons-in-law would be willing to go in Co. with me if that should be considered best. I hope you will consider the matter charitably and favorably and give me encouragement to go on.

Yours truly, D. A. JEWELL.

Letter J. E. F. Best, examiner.

158 JEWELL'S, HANCOCK CO., GA., *March 9th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 6th inst. read and noted. If you will deduct all charges for interest in the past over 7 % I will try to get my friends to take the securities you hold and make full settlement with you. I think you can afford to do that, as you have the means to do so. I cannot offer any better, for I have not the means to do so. I have thought you were friends to me, and I hope you are not enemies.

Yours truly, D. A. JEWELL.

Letter H. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *March 3rd*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: I enclose invoice 15 bl. goods, $\frac{4}{4}$ ship'd to St. Louis, $\frac{7}{8}$ to New York. I have drawn on you in favor of Cason Bros. for $1,132.19, which please honor and oblige. The d'ft is for payment for cotton. Your favor of 26th inst. is rec'd, and I will forward the insurance to you next week. I wrote to the parties you suggested in regard to the loan, and the reply is that it is against their rule to do that.

I would like to make a new arrangement with you, and my friends here will help me if we can make an arrangement with you.

Yours truly, D. A. JEWELL.

Letter I. E. F. Best, examiner.

159 JEWELL'S, GA., *March 19th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 10th inst. with ac. sales, &c., is at hand and correct except 2 cts. error which was made in bringing forward balance on your ac. current Dec. 31st, '82, to Jan. 31st, '83. Bal. Dec., $33,406.26; brought forward on Jan. ac., $33,406.28. The 4 bl. wool kerseys are here and are worth now $125.00 p'r bale. Yours of 8th inst. was duly rec'd, and I have sent 2 bl. ¼ to G. W. McAlpin & Co., Cincinnati, and will try to send them 4 more this week. Your favor of 13th inst. is at hand and noted. As you will not entertain my proposition for "one moment," please say what you will do. Your refusal to accept my d'fts places me where I must seek the best terms I can get, and if I cannot get such terms as will enable me to go on I must stop. I told you some time ago that I could not get along at advance of $40.00 p'r bale; but I believe yet if I can have the chance I can do better for all concerned than to stop.

Yours truly, D. A. JEWELL.

Letter G. E. F. Best, examiner.

JEWELL'S, GA., *March 27th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favors of 22nd inst. are at hand and noted. If you are not my friends I cannot claim any friends in this world, and if you will not help me I must go down. Your refusal to accept my d'ft I think releases me from obligation to send you the insurance. Of course I shall make no more d'fts on you after what you have written. Do just what you think is just and proper in sight of God and your fellow-man.

Yours truly, D. A. JEWELL.

Letter G. E. F. Best, examiner.

160 JEWELL'S, HANCOCK CO., GA., *April 27th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor of 23rd inst. is at hand. Your corrected ac. current is also rec'd and old one destroyed. I did sell the Baldwin lands (or exchanged them), as I wrote you, and under the terms of our agreement think I had the right to do so, and, as the debt with you is reduced nearly or quite the am't, I think it ought to be all right with you. I much regret being forced into an assignment, but think I have done the best that could be done for all concerned under the circumstances.

Yours truly, D. A. JEWELL.

Letter F. E. F. Best, examiner.

JEWELL'S, HANCOCK CO., GA., *May 8th*, 1883.

Messrs. Woodward, Baldwin & Co., New York.

GENTLEMEN: Your favor 4th inst. with ac. sales & ac. current rec'd and found correct.

Yours truly,

D. A. JEWELL.
H.

Letter E. E. F. Best, examiner.

161 In Equity. Circuit Court U. S., S. D., W. D. of Ga.

WOODWARD, BALDWIN & Co.
*vs.*
DANIEL A. JEWELL *et al.*
} Appeal to Supreme Court.

MACON, GA., *July* 29, 1887.

It is agreed by counsel on both sides that the copy deeds exhibited to the bills and answers in above cause are true copies and may be used in the record in lieu of the original, which are inaccessible.

HALL & HARRIS,
*Compl'ts' Sol's.*
LANIER & ANDERSON,
*Att'ys for Def'ts.*

162 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
*Western Division, Southern District of Georgia,* } *ss:*

I, H. H. King, clerk of the fifth circuit court of the United States for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true and correct transcript of the record as directed by law to be made and copy of the proofs and of such entries and papers on file in my office at Macon, Georgia, for the western division of said district as are necessary on the hearing of the appeal in the equity cause of Woodward, Baldwin & Company, complainants, against Daniel A. Jewell and others, defendants, lately pending in said circuit court for the western division of the southern district of Georgia, and appealed by the complainants to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, at the city of Macon, in said division and district, this 30th day of September, A. D. 1887, and of the Independence of the United States the one hundred and twelfth.

Seal U. S. Circuit Court, So. Dist., West'n Div. of Georgia.

H. H. KING, *Clerk*,
By LENOIR M. ERWIN,
*Deputy Clerk, Resident at the City of Macon.*

163 UNITED STATES OF AMERICA, *ss:*

To Daniel A. Jewell, Elizabeth S. Myrick, Steth P. Myrick, Mrs. Elizabeth Daniel, & Mrs. Eliza P. Jones, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in October, 1887, pursuant to an appeal entered and allowed in and by the circuit court of the United States for the western division of the southern district of Georgia on the 7th day of July, 1887, wherein Woodward, Baldwin & Company, a firm composed of William H. Baldwin, Christopher C. Baldwin, and Reginald T. Woodward, are appellants and you appellees, to show cause, if any there be, why the judgment and decree in said appeal mentioned should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Emory Speer, judge of said circuit court, this third day of October, in the year of our Lord eighteen hundred and eighty-seven.

EMORY SPEER, *Judge.*

164 [Endorsed:] Circuit court, so. dist., west div., Ga. Woodward, Baldwin & Co. *vs.* Daniel A. Jewell *et al.* Citation. Filed October 3, 1887. L. M. Erwin, dep. cl'k.

Due and legal service acknowledged for the within appellees Oct. 3d, 1887.

LANIER & ANDERSON,
*Att'ys of Record for Def'ts in the Original Case.*

Endorsed on cover: S. Georgia C. C. U. S. No. 310. Woodward, Baldwin & Co., a firm composed of William H. Baldwin, Christopher C. Baldwin, and Reginald T. Woodward, appellants, *vs.* Daniel A. Jewell, Elizabeth S. Myrick, Mrs. Elizabeth Daniel, Seth P. Myrick, and Mrs. Eliza P. Jones. Filed December 16, 1887.

No. 310.

# SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1890.

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WOODWARD, BALDWIN & CO.,

APPELLANTS,

*versus*

DANIEL A. JEWELL, ET AL.,

APPELLEES.

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CALCULATION SUBMITTED WITH SUPPLEMENTAL BRIEF FOR APPELLANTS.

The following is submitted as a calculation based on the debits and credits in the audited account, Exhibit C, (Record p. 53), assuming the rate of interest at seven per cent. per annum:

*D. A. Jewell in account with Woodward, Baldwin & Co.:*

| | |
|---|---|
| 1883—May 4—To balance as per account received | $24,882 46 |
| To interest 7 per cent. to 1st payment, 32 days | 152 70 |
| | $25,035 16 |
| 1883—June 5—Less 1st payment | 10,058 33 |
| | $14,976 83 |
| To interest 7 per cent. to 2d payment, 210 days | 603 14 |
| | $15,579 97 |
| 1884—Jan. 1—Less 2d payment | 8,017 00 |
| | $ 7,562 97 |
| To interest 7 per cent. to 3rd payment, 78 days | 113 11 |
| 1884—March 20—To cash paid Assignees | 442 00 |
| | $ 8,118 08 |
| 1884—March 20—Less 3rd payment | 3,150 00 |
| | $ 4,968 08 |
| 1885—Oct. 29—To interest 7 per cent. 1 year and 223 days to *date of decree by Court* | 560 21 |
| Balance due October 29, 1885 | $ 5,528 29 |

The amount due Woodward, Baldwin & Co. by D. A. Jewell on October 29, 1885, date of decree, with interest at seven per cent., computed according to the laws of Georgia, is five thousand five hundred and twenty-eight 29-100 dollars.

The foregoing calculation was made out by associate counsel, Mr. William E. Jackson, and I think is correct on the basis on which it is made, to-wit: That appellants are entitled to interest "on the account," as stated by the assignees, (Record, page 53.) In submitting it, I do not waive the contention that the interest according to the terms of the contract, (Record, page 52,) in which the 7 per cent. is not called interest, but on which Jewell agrees to pay 7 per cent. per annum and 2½ per cent. commission each six months for the "use" of the money.

WALTER B. HILL,
Counsel for Appellants.

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1890.

WOODWARD, BALDWIN & Co., Appellants,
*vs.*
DANIEL A. JEWELL *et al.*
} No. 310.

*Calculations as to Amount in Controversy Submitted by Counsel.*

4,099.13, with interest from May 4, '83.

| | | | |
|---|---|---|---|
| 7 | | 30)23.91 | |
| | | 79, say | |
| 286.93.91 | | 80 cts. a day. | |
| 2 | | 25 | |
| 573.87.82 | Int. to May 4, '85. | 20.00 | |
| 95.64 | Int. to Sep. 4, '85. | | |
| 23.91 | " Oct. 4, " | | |
| 20.00 | " " 29, '85, date of original decree. | | |
| 713.42 | | | |
| 4,099.13 | | | |
| 4,812.55 | Prin. & int. to date of original decree, viz., Oct. 29, '85. | | |
| 143.47 | Int. from Oct. 29, '85, to Ap'l 29, '86. | | 19 |
| 23.92 | " Ap'l 29, '86, " " 29, " | | 80 cts. |
| 10.70 | " May " " June 17, '86, date of confirmatory decree or decree refusing to change 1st decree. | | 10.70 |
| $4,990.64 | | | |

If, in addition to the 7 per cent. per annum, commissions at 2½ per cent. each 6 months is to be counted up to date of original decree, the amount involved would be more than $5,000.00 (prin. & interest & commissions.)

These commissions were promised by defendant in a contract which was an exhibit to the bill, which was referred to (Record, p. 2) and made part of the bill, which has a prayer for general relief.

[Endorsed:] No. 310. Woodward, Baldwin & Co. *vs.* Jewell. Calculation as to amount submitted by counsel.

Office Supreme Court U. S.
FILED.
MAY 1 1891
JAMES. H. McKENNEY,
CLERK.

# Supreme Court of the United States.

**OCTOBER TERM, 1890.**

*No. 310.*

WOODWARD, BALDWIN AND CO., A FIRM COMPOSED OF WILLIAM H. BALDWIN, CHRISTOPHER C. BALDWIN, AND REGINALD T. WOODWARD, APPELLANTS,

*vs.*

DANIEL A. JEWELL, ELIZABETH S. MYRICK, MRS. ELIZABETH DANIEL, STETH P. MYRICK, AND MRS. ELIZA P. JONES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

## SUPPLEMENTAL BRIEF OF WALTER B. HILL FOR APPELLANTS.

*"The substance of right is more important than the science of statement."*—CHIEF JUSTICE COLERIDGE.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

# Supreme Court of the United States.

**OCTOBER TERM, 1890.**

*No. 310.*

WOODWARD, BALDWIN AND CO., A FIRM COMPOSED OF WILLIAM H. BALDWIN, CHRISTOPHER C. BALDWIN, AND REGINALD T. WOODWARD, APPELLANTS,

*vs.*

DANIEL A. JEWELL, ELIZABETH S. MYRICK, MRS. ELIZABETH DANIEL, STETH P. MYRICK, AND MRS. ELIZA P. JONES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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## Supplemental Brief for Appellants.

ON JURISDICTIONAL AMOUNT.

It was stated upon the calculation furnished to the Court by counsel for both sides after the oral argument that if the "commissions" were added to the principal sum and the 7 per cent. per annum stipulated in the contract the amount involved in this cause at the date of the original decree would exceed $5,000.00.

The object of this supplemental brief is to submit the proposition that these "commissions" are, according to the terms of the contract itself, part of the appellants' demand for "interest;" that they were matter "in dispute," as shown by the pleadings and the decision of the circuit court, and that they ought to be included in the computation of the amount involved.

(It is admitted that at the time it was erroneously supposed that interest could be computed to the date of the appeal in order to fix the amount involved the interest was calculated at 7 per cent., but that error cannot affect the legal right of the appellants to insist upon the view now submitted; which view, it is respectfully urged, is the true one.)

(1.) The bill prays foreclosure for the principal sum "with interest." This does not limit the interest to 7 per cent.; and it appears from Exhibit B, attached to the bill, that Jewell agreed in writing to pay appellants for the

"use" of the money sued for "7 per cent. per annum and 2½ per cent. commission for each six months" (Record, p. 52). Although made for three years, the contract rate would continue until the debt was paid. The debtor could not by his own default reduce his liability. The answer sets up that appellants continued to charge the "commissions" up to the end of the account, to which Jewell made no objection in the meantime.

It is important to observe that the 7 PER CENT. per annum is not interest *eo nomine*, but the 2½ per cent. each six months, together with the 7 per cent., constitute what Jewell is to pay for the "use" of the money. (This was a legal contract, as hereafter shown.) As the commission was to be paid for the "use" of the money, it WAS INTEREST; just as much so as the 7 per cent. The law looks at substance, not at names.

This charge meets the precise definition of interest: "A premium allowed by law for the use of money." (Tyler on Usury, p. 35.)

When, therefore, the bill prayed for "interest" it prayed for what was interest according to the contract and under the law. "The time has passed when the science of statement is regarded as of greater importance than the substance of right." The courts will not deny relief to a suitor according to the terms of the contract on which the action is based, even if he should make an error of phraseology in describing his demand.

So in the audited account (Exhibit C, Record, p. 53) the assignees state that the appellants are entitled to $4,099.13, "exclusive of interest," but they do not undertake to specify the rate. They remit the parties to their *contract*, and that

contract, as shown, is for a total interest of 12 per cent. per annum, which the local law allowed.

(2.) The answer expressly treats the commissions as part of appellants' demand for interest.

It states (Record, p. 14) that no commission was involved, and that "it was only a desire to charge this defendant an unconscionable rate of interest." Again, it "avers that the charges that complainants have made under the name of interest and commission and brokerage are usurious," &c. (Record, p. 15.)

It is important to notice that the commissions about which the defendant Jewell takes issue with complainants are not commissions for the handling of his goods, but for the use of money. The former he seems to concede (see Record, p. 15, top of page) as an independent charge.

(3.) Not only were these commissions thus "in dispute" in the pleadings, but they were so treated by the circuit court in rendering the decision. The judge says (page 4 of opinion), "nor could their commissions be regarded as usurious."

There cannot be a doubt, in view of this decision, that if the bill had been maintained and if the court had granted a foreclosure the decree would have been for the entire 12 per cent. contracted to be paid for "use" of the money.

The statute of Georgia relative to interest in force at the date of this contract was the act of 1875 (page 105), which is as follows:

"It shall not be lawful for any person, company, or corporation to charge or take for any loan or advance of money

or forbearance to enforce collection of any sum of money any rate of interest greater than 12 per cent. per annum, either directly or indirectly, by way of commissions for advances, discount, exchange, or by any contract or contrivance or device whatever."

Thus it will be seen that this contract, which did not provide for interest in excess of 12 per cent. per annum, was legal.

It is not even necessary that the Supreme Court should concur on this point with the court below; it would be sufficient if the value or amount in question be "in dispute."

The rule as to interest being included in the amount in controversy is laid down by Chief Justice Fuller in District of Columbia *vs.* Gannon, 130 U. S., 227:

"Where interest * * * is part of the claim litigated and the judgment or decree is so framed as to provide for it to run from a period antecedent to such judgment or decree, or in actions *ex contractu*, according to the terms of the contract upon which the action is based, jurisdiction may attach." (P. 228.)

Here the interest claimed was "part of the claim litigated" and is provided for "in the terms of the contract upon which the action is based."

Even, however, if the Court should think that "commissions" for the "use" of money, when so stated in the contract, are not "interest," then it would still be true that the commissions appear as part of the contract indebtedness, were in controversy by the pleadings, and were ruled upon by the circuit court as part of the matter in dispute.

Calculation, which will be submitted herewith, based on debits and credits in Exhibit C (Record, p. 53), at 7 per cent., makes amount due at date of original decree $5,528.29. Exhibit C states that appellants are entitled to interest *on the account*, not merely on the balance there shown. Even if 7 per cent. is the correct rate, the amount due on that account exceeds $5,000. The bill refers to that account as the debt sued on. (Record, p. 3.)

WALTER B. HILL,
*Counsel for Appellants.*

CONSENT AND STATEMENT SUBMITTED BY APPELLEES.

Due and legal service acknowledged of the above brief, which I have examined and consent that it may be filed and considered by the Court.

I have time only to call the attention of the Court (from memory) to the fact that the argreement under which the 7 per cent. and also commissions were stipulated to be paid by Jewell is limited to the period of three years.

I claim that the right to commissions at least terminated at the expiration of three years from the date of the agreement. The act of 1875, referred to in the foregoing brief, allowed as much as 12 per cent. per annum for the use of money only when the contract to pay as much as that was *in writing.*

This being so is perhaps the reason the bill had no specific prayer for commissions, which had been charged up for more than three years from the date of the contract, and no allegation covering the commissions. The decision of Judge Speer is not before me, but I suppose he referred to the commissions in determining whether the security deed or mortgage was originally tainted with usury, it being claimed perhaps that the charge of commissions was a device to cover up usury. I claim that the commissions are not a part of the debt sued for.

The interest referred to by assignees is on the account on page 53, printed record, marked audited account—that is, on the balance due; that balance and interest thereon is the aggregate amount sued for.

CLIFFORD ANDERSON,
*Counsel for Appellees.*

OFFICE SUPREME COURT U. S.
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CLERK.

# Supreme Court of the United States.

## OCTOBER TERM, 1890.

*No. 310.*

WOODWARD, BALDWIN & CO., APPELLANTS,

*vs.*

DANIEL A. JEWELL ET AL.

WOODWARD and Others *vs.* JEWELL and Others[1].

(*Circuit Court S. D. Georgia, W. D., October*, 1885.)

1. Usury—Action by commission merchant.

Where mutual dealings were had between a mill-owner and his commission merchants whereby the latter have made advances and served the former as his agents for a period of twelve years, rendering stated accounts monthly, which were admitted to be correct, it is too late to plead usury in defense of a bill filed by the commission merchants to enforce the payment of a balance ascertained to be due them.

2. Same—Charging interest on monthly balances.

It is not usurious to charge interest on balances agreed to be due at the monthly settlements, when the parties conducted their business in the manner stated.

[1] Reported by Walter B. Hill, Esq., of the Macon bar.

3. Contract—Two instruments executed at same time.

Where two instruments are executed at the same time, between the same parties, relative to the same subject-matter, they are to be taken in connection as forming together the several parts of one agreement.

4. Vendor and vendee—Land subject to incumbrance.

Where a creditor takes from a debtor deeds to lands to secure his debt, and at the same time executes an instrument giving to the debtor the "full right" to sell the lands and make titles, stipulating, however, that the proceeds of such sales shall "go to the credit" of the debtor, a purchaser from the debtor under such power to sell takes a good title, nor, in the absence of allegations and proof of collusion and fraud between the debtor and the purchaser, is the latter to be held responsible for the misapplication of the purchase-money.

In Equity.

*Hill & Harris* and *W. E. Jackson*, for complainants.

*Lanier & Anderson*, for defendants.

SPEER, J. Jewell was a cotton-mill owner and planter, residing in this district; Woodward, Baldwin & Co. are commission merchants residing in the State of New York. Jewell would ship the products of his mill to Woodward, Baldwin & Co., they would sell the same on commission, rendering to him monthly an account of the proceeds. They would make advances to him to enable him to carry on his business, and these mutual dealings had continued from about the year 1870 to April, 1884. On the seventeenth of January, 1878, by instruments in writing then executed Jewell admitted an indebtedness to Woodward, Baldwin & Co., amounting to $30,000. To secure this sum he gave them deeds to lands elsewhere and to the lands involved in the issue before the court, a tract known as the "Hurt place," and another known as the "Homestead tract," in Baldwin county. On

the same day, viz., the seventeenth of January, 1878, Woodward, Baldwin & Co. executed an instrument by which they authorized Jewell to sell the lands he had conveyed to them, and to apply the proceeds to the discharge of his indebtedness. The language of this last instrument is, "The said Woodward, Baldwin & Co. further agree that the said Jewell shall have full right and permission to sell the property named in said deeds, and make titles thereto, the proceeds of said sale *to go to the credit* of the said Woodward, Baldwin & Co." This instrument refers to the deeds made by Jewell, is in consideration of the same, and, in the opinion of the court, they all constitute one and the same contract, and Jewell had three years in which to pay this money, and he failed to pay it. In the meantime, however, he had sold the Hurt place and the Homestead tract to S. P. Myrick and to Mrs. Daniel, co-respondents. Woodward, Baldwin & Co. went into possession of all the other lands conveyed by Jewell's deeds to them, and selling the same, reduced his indebtedness to $4,099.13. They now file this bill against Myrick, Mrs. Daniel, and Jewell, and they seek to subject the two tracts of land mentioned to the payment of this balance.

The respondents set up two defenses: The first is usury in the transactions between Jewell and the complainants; and the second is that Jewell had the right to sell the lands, and they bought them in good faith.

With regard to the first defense, for several reasons the court is of the opinion that it is not maintainable. The mutual transactions covered a period of about 12 years; stated accounts were rendered Jewell monthly, and he acknowledged their correctness without objection. He is concluded as to these monthly accounts, and is barred by the statute of limitations from the plea of usury and besides it is not at all clear that there was usury. It is true, interest was charged by Woodward, Baldwin & Co. on the balances which Jewell admitted to be correct; but these balances properly bore interest, and it is nowhere made to appear that

more than 7 per cent. was charged. This cannot be held usurious, (Pinckard *v.* Ponder, 6 Ga., 253) nor could their commissions be regarded as usurious.

This brings us to the consideration of the second ground of defense, namely, "that Jewell had the right to sell, and the respondents took an unincumbered title." It cannot be doubted that the two instruments executed by Jewell and Woodward, Baldwin & Co., on the seventeenth January, 1878, in legal contemplation, constitute one and the same contract. *Slaughter* v. *Culpepper*, 44 Ga. 325; 2 Bl. Comm. 327; Co. Litt. 236. Where two instruments are executed at the same time, between the same parties, relative to the same subject-matter they are to be taken in connection as forming together the several parts of one agreement. Whether these two instruments constitute a deed or mortgage is not material. If a mortgage Jewell had a right to sell the land free from its lien; if a deed, he had the right to sell the title, having reserved that right in his contract with Woodward, Baldwin & Co. Nor does it matter that the instrument authorizing Jewell to sell had but one attesting witness. *Inter partes* it is binding; and besides, it is in the nature of a reservation grafted in the deed, which was properly attested. A court of equity will not permit Woodward, Baldwin & Co. to defeat purchasers under the instrument which they themselves have executed. It is a familiar doctrine "that he who empowers another to do a wrong must suffer rather than innocent persons who have been as a consequence wronged." Besides this is simply an objection to the execution of the instrument; and the complainants produced it as a part of their exhibits to the bill, and gave it verity in that way. *Hunt* v. *Formby*, 43 Ga. 79.

It is urged for the complainants that Myrick and Mrs. Daniel hold under quitclaim deeds from Jewell, and for that reason cannot rely on the equities of *bona fide* purchasers without notice. This question has been adjudicated by the courts of the several States so as to leave a distressing con-

flict of authority; but the Supreme Court of the United States has settled the rule for our guidance here.

They hold that a grantee in a quitclaim deed cannot defend as a *bona fide* purchaser without notice. *Villa* v. *Rodriquez*, 12 Wall. 323; *Dickerson* v. *Colgrove*, 100 U. S. 578. It may well be doubted, however, whether these are quitclaim deeds. They convey the title absolutely, without the usual phraseology, "remise," "release," "relinquish," "quitclaim," etc. Besides, no form in Georgia is necessary to a conveyance, provided the intent to convey is clear. Ball *v.* Wallace, 32 Ga. 172.

Conceding, however, that the deeds are of the character claimed by the complainants the notice with which the purchaser was charged is *defect of title*. But there was no such defect here, as Jewell had the right to sell and to make titles. This right was exercised. But it is insisted that the quitclaim deeds should have the effect to put on the purchasers the duty to see that the purchase-money found its way into the hands of those to whom it belonged. 2 Perry, Trusts, 796 and 2 Story, 1127–1132, inclusive, are cited.

The English rule on this intricate topic is as follows: "Where the trust is to pay from the proceeds of sale a particular debt, the purchaser must see that the money finds its way into the hands of those to whom it belongs." Perry, Trusts, 796. But this rule is not favored in American courts, and the same author, paragraph 798, concedes this; and Mr. Justice Story declares, after a full statement of the nice distinctions involved:

"They lead strongly to the conclusion to which, not only eminent jurists but eminent judges, have arrived, that it would have been far better to have held in all cases that the party having the right to sell had also the right to receive the purchase-money, without any further responsibility on the part of the purchasers as to its application." Story, Eq. Jur. 1135. See also *Elliott* v. *Merryman*, Lead. Cas. Eq. (Amer. Notes,) p. 73.

From these authorities the conclusion is obvious that in the absence of allegation or evidence of collusion or fraud between the respondent Jewell and his co-respondents, the purchasers of the lands, the latter were under no legal obligation to look to the proper application of the purchase-money.

The prayers of the bill are, for the reasons given, denied, with costs.

JAMES H. McK...
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# BRIEF FOR APPELLANTS.

## SUPREME COURT OF THE UNITED STATES.

### OCTOBER TERM, 1890.

No. 310.

WOODWARD, BALDWIN & CO., A FIRM COMPOSED OF WILLIAM H. BALDWIN, CHRISTOPHER C. BALDWIN AND REGINALD T. WOODWARD, APPELLANTS,

*vs.*

DANIEL A. JEWELL, ELIZABETH S. MYRICK, MRS. ELIZABETH DANIEL, SETH P. MYRICK AND MRS. ELIZA P. JONES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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The prayers of the bill are, for the reasons given, denied, with costs.

JAMES H. McKENNEY
CLERK

# BRIEF FOR APPELLANTS.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. 310.

WOODWARD, BALDWIN & CO., A FIRM COMPOSED OF WILLIAM H. BALDWIN, CHRISTOPHER C. BALDWIN AND REGINALD T. WOODWARD, APPELLANTS,

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

WOODWARD, BALDWIN & CO., Appellants,

*vs.*

DANIEL A. JEWELL et al.

*No. 310, October Term, 1890. Supreme Court of United States.*

# Brief of Walter B. Hill and William E. Jackson, for Appellants.

## Statement of the Case.

Daniel A. Jewell was the owner of a cotton mill in Georgia. He consigned the products of his mill to the appellants, who were commission merchants in New York, to be by them sold for his account. From time to time they made advances to Jewell and he gave them as security conveyances to certain lands in Georgia. These conveyances were made under a Georgia statute (hereinafter fully copied) by virtue of which a debtor may pass the title to a creditor to secure a debt. Jewell failed and made an assignment in insolvency. The appellants proceeded to realize on their securities; but found that Jewell had previously sold to and exchanged with his co-defendants in this case the property embraced in one of his conveyances and which was intended to secure the appellants in the sum of $5,000.00. Appellants filed this bill to foreclose the instrument, which in its equitable effect, resembles a mortgage. They averred that in selling the property Jewell had not sold the entire title, but merely his equity of redemption; that the vendees from Jewell had notice of their rights and had only bought Jewell's equity. In support of this theory of the case they relied on the evidence of the valuations of the land stated in the conveyances as showing that the lands were worth the amounts paid for them plus the amount of the appellants' security, and contended that under the law applicable to the facts, Jewell's disposition of the lands was only a disposition of his interest, subject to the rights of appellants. The defendants answered that Jewell had the right under their contract with the appellants to sell and pass the full title; that he

had sold and they had bought with this understanding. Such is the case at bar—in the briefest possible outline. The controversy is about the nature and legal effect of the transactions (sale and exchange) by which Jewell disposed of the lands covered by the security deed he had given to appellants.

## Jewell's Indebtedness to Appellants.

The transactions between Jewell and appellants began under a contract dated July 1st, 1873, (Record, page 65,) which was superseded by a new contract dated January 17, 1878, (Record, page 52) under which appellants advanced him $30,000.00—and for which sum Jewell gave them as security conveyances to several properties in Georgia. Regular accounts current were rendered each month to Jewell up to the time of his failure on April 17th, 1883—at which date the indebtedness amounted to $24,882.46. The Record contains numerous letters acknowledging the correctness of the statement of account. (Record, pages 73-82.) In his answer Jewell set up that there was usury in the debt and annexed a statement of alleged overcharges of interest (Record, page 16) which he submitted merely as an approximate to be examined by a Master. (Record, page 19.) The Court below resolved this issue in the case in favor of the appellants upon the grounds (1) that there was no usury in the debt; and (2) that if there was any usury, the demand therefor was barred by a Georgia statute (hereinafter fully copied) which provides that a plea of usury is barred by the lapse of twelve months. It seems unnecessary to set out more fully this part of the case.

## Appellants' Security for the Debt.

On January 17th, 1878, Jewell executed deeds to various pieces of property of Georgia to secure different portions of said sum of $30,000.00. The only one of these conveyances now in question is the one (found on page 51 of Record) bearing said date whereby in consideration of $5,000.00 he conveyed to appellant the Hurt place containing 760 acres and a part of the homestead tract of S. P. Myrick containing 750 acres. The deed recites that it is executed in accordance with the Georgia statute, Code §§ 1696-71, hereinafter fully quoted. It contains the proviso that upon payment of the sum of $5,000.00 within three years the instrument is to be void. The deed is executed in the presence of two witnesses, one being a Notary Public, and is so executed as to be

entitled to record under the laws of Georgia and was recorded on January 31st, 1878.

On the same date when this and the other instruments to secure the said sum of $30,000 were executed, the appellants executed an agreement (Record, pages 52–3) whereby they agreed that upon payment of the said sum within three years they would "return the said security to said Jewell;" and that "said Jewell shall have the full right and permission to sell the said property named in said deeds and make titles thereto, the proceeds of the sale to go to the credit of Woodward, Baldwin & Company.

This agreement was executed in the presence of only one witness; was not entitled to record under the laws of Georgia, as a power of attorney to sell land, and was in fact never recorded.

In the bill, the security deed dated January 17th, 1878, is treated as a mortgage, (Record, p. 2,) but in an amendment (Record, p. 24) the Court was asked to construe the deed and give to it the proper legal effect. (In Georgia, a mortgage creates only a lien, and the peculiar feature of the security deeds authorized by the statute mentioned is that they pass the title as a security.)

After Jewell's failure, the appellants proceeded to realize on their several securities, and after selling the same, it was found that their debt was paid except $4,099.13, with interest from May 4th, 1883. (Record, p. 53.) The principal and interest due at at the time of this appeal, exclusive of costs, amount to $5,318.53.

## Exchanges and Sales of the Property Conveyed to Appellants by Jewell.

On February 7th or 8th, 1879, Jewell exchanged 353 or 356 acres of the Hurt place with Mrs. Elizabeth Daniel, for 1,367 acres of land in Sumter county, he executing a deed to her, (Record, p. 66,) and she executing a deed to him, (Record, p. 54.)

On the death of Mrs. Daniel, the title passed to her heirs-at-law, Myrick, K., and Daniel and Eliza P. Jones. The former conveyed his interest to the latter. By a supplemental bill, Mrs. Jones was made a party.

On February 1st, 1882, Jewell sold the 750 acres of the Myrick homestead and that portion of the Hurt place not previously conveyed to Mrs. Daniel, to Stith P. Myrick. (Record page 65.) The land was bought by the latter for his wife and he conveyed

the same to her. (Record, page 68.) Both were made parties to the bill.

### Appropriation of Proceeds of Sale.

At the time of the exchange of lands between Mrs. Jewell and Mrs. Daniels, Mr. Jewell took the title of the exchanged lands in himself individually. (Record, page 54.) He afterwards sold the land, to which he thus acquired title, to his nephew, Albert H. Jewell, (Record, page 54) but it is not claimed the proceeds of this sale were sent to appellants; nor that either transaction was reported to them at the time.

Elijah P. Smith and R. T. Woodward, two members of appellants' firm, testified that they had no knowledge or notice of this exchange or of the subsequent sale of land to S. P. Myrick; that their consent was not asked or given; and that they never received the proceeds or their equivalent in any shape or form either in merchandise or cash. (Record, page 43–45.)

Jewell states in his answer (Record, page 12) that when he sold the lands he believed that upon a full and fair accounting, appellants would be indebted to him. "Had he not so believed, he would have promptly accounted to complainants for the proceeds of the land so sold by him." He testified subsequently (Record, page 61) that although he did not notify appellants of the sale, they afterwards (having found out about the sales) notified him that under the circumstances they would not accept any more drafts, and he replied that he would not draw on them again; that he afterwards shipped them what he thought was enough to cover the money that he received from the lands. (Record, page 61.) Being asked about this subsequently, he stated that he referred to certain letters between appellants and himself; (but these were not produced, Record, page 70) and that the letters were written a short time before his failure, "maybe three or four weeks, perhaps not so long." He did not claim that he had notified appellants of any such shipment; nor did he dispute the indebteness alleged in the bill except upon the ground of usury. (Record, page 59.)

In February, 1882, (the date of the sale to Myrick) the appellants testify that the indebtedness of Jewell to them was $32,345.64. (Record, pages 43–44.)

### Relations of the Parties.

Daniel A. Jewell and S. P. Myrick were on very friendly and intimate terms. They both testify to this fact; had been friends

for thirty-seven years. (Record, pages 60 and 64.) When Myrick went into bankruptcy, Jewell advanced a large sum of money to take up judgments against Myrick (page 71,) and purchased this land at assignee's sale. Myrick remained in possession of the land after Jewell's purchase and during the time that appellants held their security deed to it, renting from Jewell (Record, p. 61) up to the time when the latter sold the 1,160 or 1,130 acres to Myrick and exchanged the 350 acres with Mrs. Daniel.

Mrs. Daniel was a daughter of Myrick; and Myrick acted as her agent in the exchange of lands with Jewell. (Record, p. 73.)

## Notice of Appellants' Rights.

The security deed to the 1,510 acres was recorded and operated under the Georgia statute as constructive notice that the title was in appellants as security for the sum of $5,000.00. In addition to this, there was actual notice. Jewell testifies that he told Myrick there was a mortgage on the land. (Record, page 60.) Myrick also so testifies, (Record, p. 63,) and he further testifies, "My understanding was that the proceeds were to be applied to the debt of Woodward, Baldwin & Company, but nothing was said about it." (Record, pages 63–64.)

The deeds executed by Jewell to Myrick and Mrs. Daniel are executed by him individually. (Record, pages 65–6.) They contain no reference to the power conferred by the agreement between Jewell and appellants, and do not purport to be an execution of that power.

## Values of the Land.

The principal point relied on by appellants is, that under the law and facts involved in the transactions between Jewell and Myrick individually, and Myrick as agent of Mrs. Daniel, the former sold and the latter bought the land subject to appellants' rights, or, in other words, that they only paid for Jewell's interest, expecting to have to pay the $5,000.00 to appellants. Appellants rely on the evidence afforded by valuations of the land, as recited in the deeds, and as shown by the tax returns made by the parties, as well as other testimony, in support of this contention. This is conceived to be the pivotal point in the case, and the statement of the case is made more fully on this phase of the controversy than on the less important issues.

The first proof of value of the 1,510 acres conveyed by Jewell to appellants is its value in 1874, when Jewell purchased it at assignee's sale of Myrick's property. Myrick states that the

land was then covered with judgments and executions which Jewell had to take up. (Record, pages 60–71.) These amounted, Myrick states, to more than $10,000.00, perhaps double. (Record, page 72.)

Jewell disposed of the land to Mrs. Daniel for $1,000.00. (Record, page 66,) and to Myrick for $4,000.00. (Record, page 60.) Total, $5,000.00.

Jewell states that during the time he owned the land he held it at $6.00 per acre. (Record, page 60.) In the same connection he mentioned the sacrifice of other pieces of property which were sold at public outcry.

T. P. Wardlaw testifies that the land was worth $6.00 to $7.00 per acre. (Record, page 50.) B. T. Bethune places it $3.50. (page 70.) J. T. Miller, at $4.50 to $5.00; if sold on time, $6.00 to $6.50. (Page 71.) Walter Paine at $5. (Page 72.)

Myrick's tax returns were offered in evidence. He states that he returned the land for taxes at $3.50 per acre. (Record, page 71.) But the return shows that he returned 1,130 acres, as agent of his wife, in 1882, 1883, and 1884, at $6,600.00. (Record, page 56.) He states that he has conveyed to his wife the 1,130 acres which he had bought from Jewell; that she had no other tract of 1,130 acres in that county. He states that the tract included 10 acres of land at Midway, worth $30 to $40 per acre. (P. 71.) This seems to be a mistake, on inspection of the tax return, (Record, page 56,) but if the statement was correct, the land bought from Jewell would be returned at nearly $6.00 per acre.

In the exchange of lands with Mrs. ~~Jones~~ Daniel, effected through her father as agent, Jewell conveys 353 acres (returned for taxes as 343) for $1,000.00 (Record, page 67.) She conveys to him in exchange a tract of 1,367 acres in Sumter county worth $3,000.00 (Record, page 54) and which Jewell within less than a year afterwards sold to his nephew for $3,431.29, cash. (Record, page 54–5.)

T. P. Wardlaw testifies (Record, page 50) that Myrick told him he had exchanged a part of the land for 1,200 or 1,300 acres of land in Sumter county worth $5.00 per acre.

The lands which Jewell sold Mrs. Daniel in 1879 for $1,000 are returned in the same year for taxes by her father, S. P. Myrick, as her agent, at $2.000.00. (Record, pages 56–71.)

The deed of Jewell to Mrs. Daniel, dated Februrary 8th, 1879, was not recorded until February 1st, 1884, and the deed of Jewell to Myrick and Myrick to his wife, dated February 1st and 13th,

1882, were not recorded until May 16th, 1883, after the failure of Jewell.

The Court below rendered a decree dismissing the bill. The grounds of the judgment are set forth in the decision reported in the Twenty-fifth Federal Reporter, page 689. The ground stated is in brief that under the contract between Jewell and Woodward, Baldwin & Company, the former had the right to sell the land and that the vendees were not bound to see to the application of the purchase money.

## II.

### Specification of Errors.

The errors complained of are errors of law and fact.

1. The evidence shows that the land conveyed by Jewell to appellants was worth at least $10,000.00. Mrs. Daniel and Myrick paid $5,000.00 for it, with full knowledege of appellants' security for $5,000.00. They bought it for precisely what Jewell's equity of redemption was worth. The gross inadequacy of price—if it was intended to be a sale of the entire title, coupled with the proof of the intimate and confidential relations of the parties—validates the theory on which the bill was filed, viz: that the sale was made subject to their lien and that the vendees bought only the equity of redemption.

The Court erred in disregarding this evidence; and in dismissing the bill upon the sole ground that Jewell had the right to sell the entire title to the lands. As a naked proposition this is not denied, but appellants specify as error the failure of the Judge to consider the character of the sale and to decree that it was not such a sale, nor upon such a consideration as to vest the entire title in the vendees.

2. As matter of law, the sale of the lands to which Jewell had passed the title into appellants and which he had no right to sell except by virtue of a power conferred upon him, being made without any reference to that power and purporting only to convey his title, was a sale of his equity of redemption and not of the entire title. The decree is erroneous in disregarding this rule of law—which gives to the transaction the character which appellants insist the evidence also affixes to it. Jewell had the right to convey his interest; the power to convey the full title, being attested by only one witness, disabled him from conveying the full title. The acceptance of a conveyance from him individually

and not as attorney of appellants, shows the true character of the transaction.

3. If the foregoing errors are not held so to be, then appellants insist that the Court erred in holding that the power to sell includes the power to exchange. Jewell's act in taking title to himself individually to the exchanged land was a breach of trust, of which Mrs. Daniel and her agent, Myrick, had both constructive and actual notice, and they hold the lands subject to a trust in favor of appellants.

## III.

### Argument on Law and Facts.

The pressure of the case is at a single point. What was the character of the transactions between Jewell and his co-defendants?

When the appellants, in order to collect their debt, had to resort to this security, they found it had been disposed of. Good faith between Jewell and themselves required that they should have been informed of the exchange and sale at the time, and that the title to the substituted property in the exchange with Mrs. Daniel, and the proceeds of the sale to Myrick should have gone to them. Whatever may be said of them, Jewell is convicted upon the record, of a breach of trust. (Page, 43-45.)

2 Sim. & Stu. 199

Mrs. Daniel, the daughter of Myrick, does not take part in the transactions, except through him. He and Jewell were friends of long standing, on very intimate terms, (p. 64.) and it is through Jewell's intervention, that Myrick finally gets back the property which Jewell bought in 1874 at assignee's sale, (p. 71-2), and which he had allowed Myrick to occupy in the meantime, (p. 61.)

Under such circumstances, our contention is that less regard ought to be paid to the statements of the parties testifying in their own behalf, and for each other, than to the facts which inhere in the transactions themselves. True, Jewell and Myrick state that the sale to Myrick was a sale of the full title, not merely Jewell's interest. (It is very significant, however, that neither one so testified in regard to the exchange.) But when Jewell and Myrick were separately examined, Jewell testified that was both a sale of part of the land and exchange of the other, (p. 59), while Myrick testified positively, "No exchange

of lands was part of the consideration of the deed to these lands," (p. 64.) He afterwards testified otherwise, (p. 73.)

In view of the concealment of the transaction from appellants by Jewell, which Mrs. Daniel and Myrick aided and abetted by withholding their deeds from record until after Jewell's failure, (p. 66-7)—in view of such contradictions as the above, which Jewell declared he could not explain, (p. 69-70)—in view of the admitted knowledge by Myrick of the rights of the appellants, (p. 63,) we contend that what the transactions and circumstances speak, is the best evidence in this case.

We submit several brief calculations:

| | | |
|---|---|---|
| Jewell paid for the land (p. 72) (at least) . . . . . | | $10,000 00 |
| " sells to Mrs. Daniel (p. 66) 343 acres for | $1,000 00 | |
| " sells to Myrick (p. 65) 1,130 acres for | 4,000 00— | $5,000 00 |
| Balance—amount of appellants security . . . . | | $5,000 00 |

OR, THE FOLLOWING:

| | |
|---|---|
| Jewell received for the exchanged land (p. 54) . . . | $3,431 29 |
| Myrick returns for taxation the sold land (p. 56) . . | 6,600 00 |
| | $10,031 29 |

Showing that according to the values of the land at the time, the two tracts were worth double the nominal considerations; or, in other words, were worth what was really paid, plus the appellants' debt. For taxation, land is usually returned below its value; and this calculation is more than fair to the appellees.

OR THE FOLLOWING:

Value of land per acre, by Wardlaw's evidence, $6.50. (P. 50.) (This corresponds with Jewell's evidence, p. 60.)

| | | |
|---|---|---|
| Value of 1,510 acres at $6.50 per acre . . . . . | | $10,315 00 |
| Consideration of Daniel exchange . . . . | $1,000 00 | |
| Consideration of Myrick sale . . . . . | 4,000 00— | 5,000 00 |
| Balance for appellants' security . . . . . | | $5,315 00 |

If we look at the Daniel exchange by itself, the truth is still plainer.

Both witnesses say this transaction was an exchange. (Pages 60 and 73.)

| | |
|---|---|
| Jewell conveys the land Feb. 8th, 1879, for . . . . . | $1,000 00 |
| The same year (p. 36) it is returned for taxation at. . | 2,000 00 |
| Jewell receives lands worth as recited in deed . . . . | 3,000 00 |
| This land he sells within ten months for . . . . . | 3,421 39 |

Neither Jewell or Myrick testified that in this exchange he conveyed to Mrs. Daniel the entire title. Neither offered any explanation of the fact that Mrs. Daniel bestowed on Jewell $3,000.00 worth of land for $1,000.00. There can be no explanation except the manifest truth of this case, that an allowance was made for the proportionate part of the appellants' security which Mrs. Daniel must ultimately pay.

What then is the equity of the case? "The true law delighteth in the payment of just debts." If this security is foreclosed the defendants will not pay more for their land than it was worth. If the foreclosure is defeated, the appellants will have been defrauded and defendants will hold the property as the result of a breach of trust and at a grossly inadequate price.

2. The following rules of law are applicable to the theory of the facts set forth in the foregoing argument:

A sale of property covered by a deed having a power of sale without referring to the power is construed to be a sale of the equity of redemption. 1 Devlin on Deeds, § 422; Pease vs. Pilot Knob Co., 49, Mo. 124. See 7 Cranch 34, 47, 5 Pet. 317

Jewell could legally pass the title to his interest without regard to the power. Had he attempted to pass the entire title under the power, the insufficiency thereof (see post) would have been in the way.

3. The deeds of Jewell to Mrs. Daniel and Myrick are without warranty—mere quit claims. The vendees cannot claim to occupy the favored position of *bona fide* purcashers. 100 U. S., 598. If Jewell had been selling the entire title, it is very probable they would have required the usual warranty deed.

4. If, however, it be held that in these transactions Jewell and the vendees attempted to pass the entire title, then the following rules of law are applicable.

(a) Power to sell does not include power to exchange. 2 Perry on Trusts, §769; 1 Devlin on Deeds, §436 and 373; Cases of executors under will. Taylor *et al.*, vs Galloway *et al.*, 1 Hammond, (Ohio,) 232; King vs Whiton *et al.*, 15 Wisc., 684; Cases of trustees authorized by deed to sell and reinvest stock: Ringgold vs Ringgold *et al.*, 1 Harris & Gill, (Md.,) 11—a case argued by Wirt, Taney & Berrien; Case of Commissioners authorized by statute to sell: City of Cleveland vs State, 16 Ohio St., 236, 268. See also, School vs. McCutty, 11 Rich, S. C., 424; 1 Madd, 214; 4 Brown Ch., 278. 3 Ves., Jr., 98; 2 Sug. Pow., 506.
Morrell v Cone 2 2 How 75, 81-2.
Trustee can not acquire trust property by exchange. Wormly v Wormly 8 Wheat 421,

Taking the title to the exchanged land in Jewell's name individually was a breach of trust; especially as Myrick's understanding was that the proceeds were to go to the credit of appellants. (Pages 63–4.) This breach of trust put him on such notice of Jewell's fraudulent purpose as to affect the subsequent transaction between Jewell and himself. 2 St. Eq. 1131(a) 4 Ally v Gr. 420

(b) Sale by a mortgagee at a sacrifice is evidence of bad faith. 1 Devlin on Deeds, §428; and numerous citations on top of page 414. 2 Perry Jr. § 810

Here the inadequacy is shocking; less than half of the true value.

(c) Jewell was not authorized by the power to pass the full title.

The deed of Jewell to appellants was made under the following statute of Georgia, Code §1969:

"Whenever any person in this State conveys any real property by deed to secure any debt to any person loaning or advancing said vendor any money, or to secure any other debt, and shall take a bond for titles back to said vendor upon the payment of such debt or debts, or shall in like manner convey any personal property by bill of sale, and take an obligation binding the person to whom said property was conveyed to reconvey said property upon the payment of said debt or debts, such conveyance of real or personal property shall pass the title of said property to the vendee: Provided, that the consent of the wife has been first obtained, till the debt or debts which said conveyance was made to secure shall be fully paid, and shall be held by the Courts of this State to be an absolute conveyance, with the right reserved by the vender to have said property reconveyed to him upon the payment of the debt or debts intended to be secured agreeable to the terms of the contract, and not a mortgage."

The Courts of Georgia have held that the holder of the title under such a deed may maintain ejectment. (The only defense of the debtor is to tender the money due): Lackey vs. Bostwick, 54, Ga. 45. See, also, Woodson vs. Veal, 60, Ga., 562, 564. Such title is held to be good against dower and homestead.

The title being in appellants, a power of attorney executed by two witnesses was required to empower the attorney to convey the title. Code of Georgia, §2181: The Act creating the agency must be executed with the same formality (and need have no

more) as the law prescribes for the execution of the Act for which the agency is created:

SEC. 2690. A deed to lands in this State must be in writing, signed by the maker, attested by at least two witnesses, and delivered to the purchaser or some one for him, and be made on a valuable or good consideration.

5. Mrs. Jones taking by descent from Mrs. Daniel and Mrs. Myrick, holding deed from her husband, are subject to the trust 2 Perry on Trusts, §828.

6 The statute cited relative to usury is as follows: Code, §2057. (e) "Any plea or suit for the recovery of such forfeiture (excess of interest) shall not be barred by lapse of time shorter than one year."

7. application of purchase money 2 St. Eq. § 1127. 2 Perry Tr. § 796. Duffy v Calvert 6 Gill. 487

Walter B. Hill

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IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1890.

*No. 310.*

WOODWARD, BALDWIN & CO., APPELLANTS,

*vs.*

DANIEL A. JEWELL, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

## BRIEF OF CLIFFORD ANDERSON, COUNSEL FOR APPELLANTS.

CLIFFORD ANDERSON,
*Counsel for Appellants.*

[illegible] & Co., Printers, Washington, D. C.

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## BRIEF OF CLIFFORD ANDERSON, COUNSEL FOR APPELLEES.

Woodward, Baldwin & Co. filed a bill in the circuit court of the United States for the southern district of Georgia to foreclose an alleged mortgage executed to them by D. A. Jewell and his wife on the 17th day of January, 1878, on certain lands in Baldwin county, Georgia, to recover an alleged indebtedness of $4,099.13 due on the 20th day of March, 1884. The bill was filed on the 10th day of April, 1884, against the said Jewell, S. P. Myrick, and Elizabeth Daniel, the two last named having purchased the lands

from Jewell after the mortgage was made. Mrs. S. P. Myrick and others, subsequent purchasers from Myrick, were afterwards made parties defendant.

Jewell answered, denying the indebtedness and claiming that large amounts of usury had been charged by the appellants on the loans they had made him in connection with the transactions between the parties. Jewell owned and operated a cotton factory in Georgia, and contracts had been made between him and the appellants by which the latter (who were merchants in New York) were to sell his goods on commission and apply the proceeds to the payment of the loans they were to make him.

The mortgage sought to be foreclosed was given as security for the loans and covered the lands in controversy. Jewell had given appellants security deeds to other lands, which had been sold by appellants and the proceeds applied to the indebtedness claimed to exist, leaving the alleged balance of $4,099.13.

It was recited in the mortgage that it was executed and delivered under the acts of the Legislature of Georgia embodied in the Code of 1873 in sections 1969, 1970, and 1971. (See instrument on pages 51 and 52, printed Record.)

Contemporaneously with the execution of the alleged mortgage, viz., on the same day (see printed Record, page 52 and 53), a contract was executed by the parties which contains the following clause relating to the lands embraced in the instrument designated as a mortgage in the bill, to wit:

"The said Woodward, Baldwin & Co. agree that the said Jewell shall have full right and permission to sell the property named in said deeds and make titles thereto, the proceeds

of sale to go to the credit of the said Woodward, Baldwin & Co."

Under the authority of said clause Jewell had sold the lands in controversy to S. P. Myrick and Mary E. Daniel (pages 65, 66, 67, printed Record).

It was claimed by appellants that Jewell had not accounted to them for the proceeds of the sales of the lands sold to Myrick and others, and that the latter had notice of the mortgage or deed and of the contemporaneous contract. The bill prayed that the conveyances to them should be cancelled.

They claimed that they had bought in good faith and for a fair price and had bought the fee and not the equity of redemption.

There was evidence that the parties who purchased the lands from Jewell had paid a full price therefor, and there was evidence that the lands were worth more than the price paid, especially if they had been sold payable in whole or in part, in future installments or on time.

The deeds of conveyance to Myrick and by him to other persons were without warranty of title.

It is believed that the foregoing statement is sufficient to present the questions raised on the trial.

The court decreed that the bill be dismissed with costs.

Counsel for appellees submit the following propositions:

1. The security deed (or mortgage) and the contemporaneous agreement constitute one contract.

In Holbrook *vs.* Finney, 4 Mass., 566, it is ruled that "A conveys land to his four sons in fee, who, by deed of the same date, mortgage the same land to the father to secure the payment of a sum of money, and also a maintenance of

the father during his life; it was held that the two deeds were par's of the same contract * * * ." The same principle is laid down in Scott, Carhart & Co. *vs.* Warren *et al.*, 21 Ga., 408. On page 411, Lumpkin J., says:

"The bargainor sells the land to the bargainee on condition that he pays the price at the stipulated time, and whether the contract, *which is one*, is contained in the same instrument, as it well may be, or in distinct instruments executed at the same time can make no possible difference." And again, on same page: " Then it took both instruments to consummate the agreement. It is like a feoffment and defeasance at common law, which is deemed but one conveyance. 2 Bla. Com., 327."

To the same effect is 1 John. Cas., 95. Finally on this point the deed itself refers to the agreement, and thus, as a matter of fact, makes the two instruments one contract.

2. Myrick and Mrs. Daniel were not bound to look to the application of the purchase-money.

In Wormley *vs.* Wormley, 8 Wheat., 421, it seems to be ruled (as stated in Danforth's Digest) that if the " acts of sale and reinvestment are intended to be at a distance from each other, purchaser is not bound to see to application of such money."

Here appellants authorized the maker of the deed or mortgage to sell and give them credit for the proceeds. This implied the application of the money to the mutual accounts growing out of future transactions between the mortgagor and mortgagee. The purchaser could not be expected to inquire into such future transactions to ascertain the state of the accounts nor could his title be treated as inchoate or imperfect until these accounts were adjusted. The agreement obviously contemplated that the creditor would hold Jewell, his debtor and agent, alone responsible for the proper

application of the money. The purchase was in good faith and for a fair price. (See bottom of page 58 and top of page 59 and bottom of page 60 and top of page 61 (Jewell's testimony) of printed Record, Myrick's testimony on page 63 and pages 71 and 72, and Bethune's testimony on page 70 of printed Record.) As additional evidence of Jewell's good faith and the efforts he made to sell at a full price, see page 60 of printed Record.

I cite also, in support of this second proposition, Perry on Tr. (2 vol.), sections 793 to 795, inclusive. In section 793 it is said:

"In the second place, the rule may be controlled by an implied intention that the trustee shall have the power to give valid receipts for the purchase-money. Thus if a settlor creates a trust for an *immediate* sale it is clearly implied that a legal and equitable receipt for the purchase-money shall be *signed by some one* at the time of the sale. There can be no conveyance without payment of the purchase-money, and there can be no payment without a complete discharge."

Considering the relations and the nature of the dealings between the mortgagor and the mortgagee in this case, the implication would seem to be plain and obvious that purchasers from the former would have no concern with the disposition of the purchase-money in the absence of collusion or fraud, of which there appears to be no evidence or ground of suspicion.

3. The contemporaneous agreement of January 17, 1878 (printed Record, pages 52–'3) authorized Jewell to sell the lands, but did not require him to sell for cash or for money. If he received from Myrick lands in Sumter county in part

payment for the lands in Baldwin county he had the right to do so under the agreement. (See Markey *et al. vs.* Langley, 92 U. S., 142, particularly 153–'4; Clements *vs.* Machbœuf, *ib.*, 418.) Lands thus received in part payment took the place of those sold, and the proceeds thereof Jewell was required, by the agreement (pages 52–'3, printed Record) to pass to the "credit of Woodward, Baldwin & Co."

Further, Jewell testified (see answer to cross-interrogatory on page 61, also his evidence on page 70) that some time afterward he "shipped them what (he) thought was enough to cover the money that (he) received for the land."

4. It was urged in the circuit court that the deeds made by Jewell to Myrick and Mrs. Daniel, being conveyances *without warranty* of title, raise a presumption that they bought with notice of the nature of Jewell's title and right to sell.

The supreme court of Georgia has in several cases held that a deed without warranty "does not of itself negative the presumption of good faith." In McCamy *vs.* Higdon *et al.*, 50 Ga., 629, the court, on page 631, says:

"Adverse possession of lands under written evidence of title for seven years shall give a title by prescription. But if such written title be forged or fraudulent and notice thereof be brought home to the claimant before or at the time of the commencement of his possession no prescription can be based thereon. Code, sec. 2641 (it is sec. 2683 in Code of 1882). A deed without warranty, as in this case, is written evidence of title, and, in the absence of proof to the contrary, the presumption is that the party claiming possession under it does so in good faith."

To the same effect is 58 Ga., 386, and 68 Ga., 767.

Whatever conflict of authority there may be, generally, as to whether a quitclaim deed is or is not presumptive evidence of fraud or of notice as to any defect in the grantor's title, the decisions cited ought, it would seem, to control in this case, the lands to which the deeds relate being lands located in Georgia, and the conveyances being between Jewell, Myrick, and Mrs. Daniel, all residents of that State.

But concede that the conveyances in question (they having no warranty of title) are quitclaim deeds and raise a presumption that Myrick and Mrs. Daniel and all holding under them had notice of Jewell's title and authority to sell, what does such notice signify? Simply that they knew of the security deed to Woodward, Baldwin & Co. and of the contemporaneous agreement authorizing Jewell to sell the lands and place the proceeds to their credit. Myrick states in his testimony that he knew this, and that his understanding was that Jewell would give the credit required (see printed Record, bottom of page 63 and top of page 64). There is no evidence in conflict with this and none to raise the least suspicion of any collusion between him and Jewell to deprive appellants of any of their rights, or that he had any suspicion of any purpose on the part of Jewell to do so, or that Jewell even had at the time any intention not to credit appellants with the proceeds of the sale. What is here urged as to Myrick applies with equal, if not greater, force to Mrs. Daniel.

5. But the deeds executed by Jewell to Myrick and Mrs. Daniel were not, strictly speaking, quitclaim deeds. They were deeds without warranty of title. A sufficient explanation of the omission of any warranty clause, if one were